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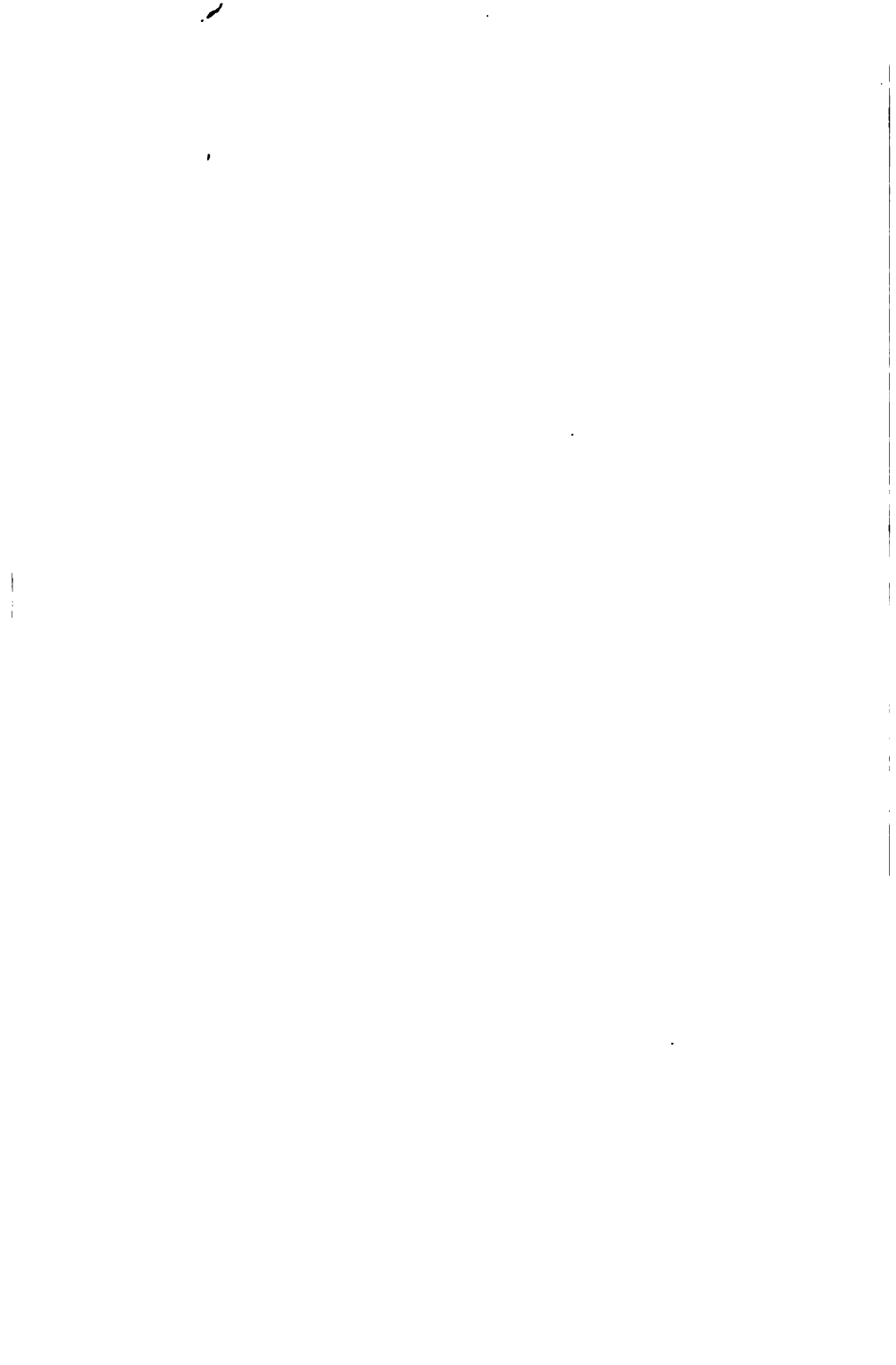






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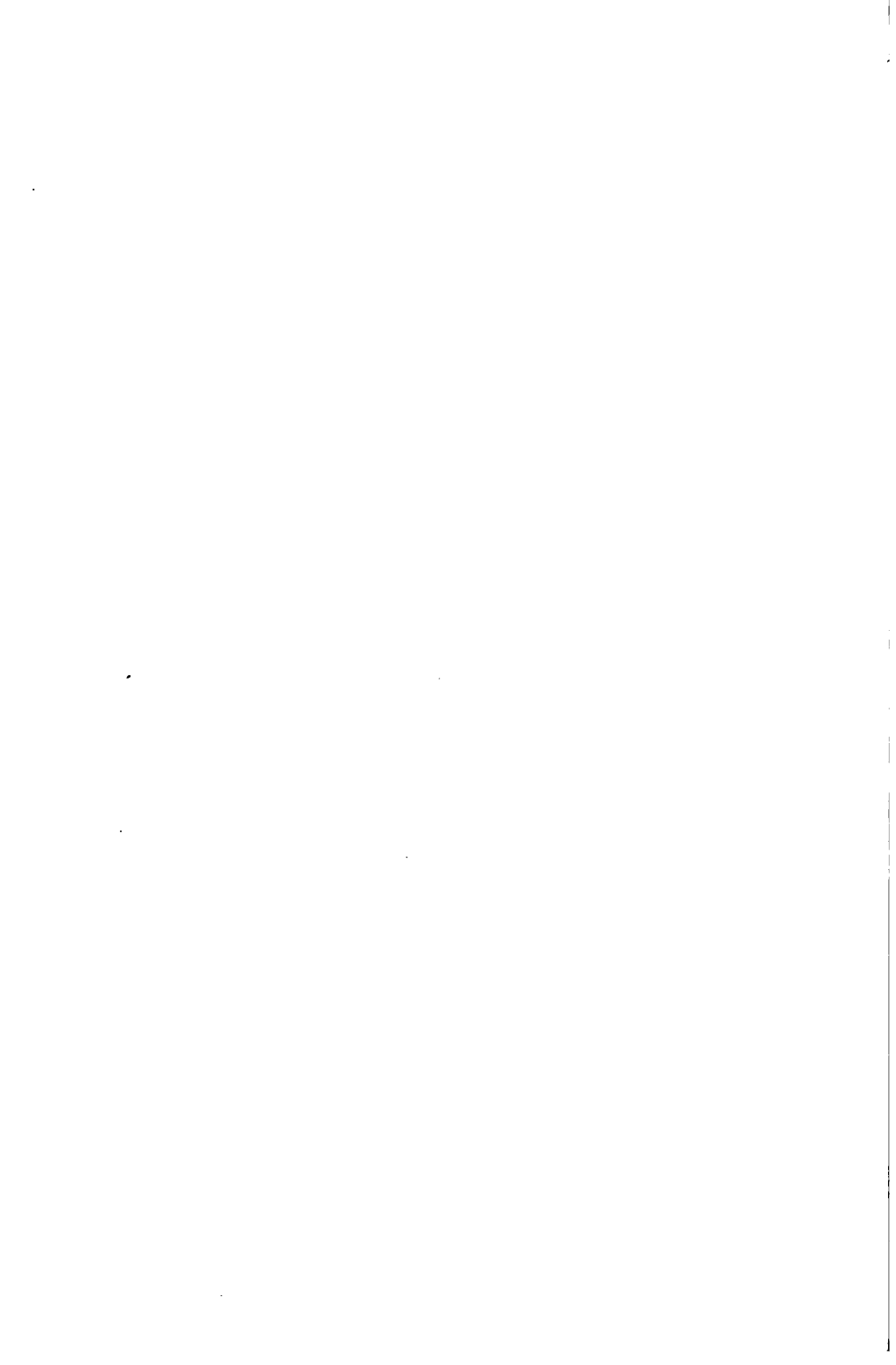


*THE*  
*HISTORY OF NORTH AMERICA*

*Guy Carleton Lee, Ph. D.*

*of*

*Johns Hopkins and Columbian Universities, Editor*





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ALEXANDER HAMILTON

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*Photogravure after the painting by Daniel Huntington, now  
hanging in the Lenox Gallery, New York.*

THE HISTORY OF NORTH AMERICA  
VOLUME SEVEN    *THE FORMATION AND  
DEVELOPMENT OF THE CONSTITUTION*

BY

THOMAS FRANCIS MORAN, PH. D.

PROFESSOR OF HISTORY AND ECONOMICS IN PURDUE UNIVERSITY

Author of: *The Bicameral System; How Minnesota Became a State;  
The Political Economy and Business Management of the Railway;  
The Origins of the United States Constitution; The Theory and  
Practice of the English Government, etc., etc.*

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## EDITOR'S INTRODUCTION

THE most remarkable document in the world's history is the Constitution of the United States. This is not because, as is often alleged, the Constitution came hot-forged from the brains of those intrusted with the task of drawing up a form of government for the federated States, for not so did the Constitution come into existence. Nor because among the great documents adjusting human differences and binding together diversified interests the Constitution stands unique in its provisions, for upon analysis its constituent parts will be found to rest upon well defined and frequently expressed principles. The reason why we rank the Constitution so high among governmental monuments lies in the simple fact of its present existence, or, in other words, because of that quality of elasticity by which a document intended for one purpose has been made to serve another. The Constitution in its original form was a compact between thirteen quarrelling colonies; but so well was it formulated and so nicely were its parts adjusted that it has endured the stress of expansion until to-day, with comparatively slight alteration either by direct legislation or by conventional alteration, it binds together forty-seven strong States even more firmly—and this regardless of the Civil War—than it united the weak colonies. It is for this quality of flexibility and expansiveness that we designate the Constitution of the United States the most remarkable document in the world's history.

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Though we are forced to deny the statement of eminent historians that the Constitution is an original creation for whose conception those who formed it owe no thanks to aught beyond their own intellects and the conditions of material and political circumstances, and that in its provisions we find unique conceptions of the political rights of man or of the forms for foreseeing these rights, we are forced to commend the wisdom with which materials at hand were used and theories and forms borrowed from France and England were availed of; and we ascribe to the great body of the Constitution a larger merit than we are willing to concede to any other instrument of government.

In the volume to which these words are an introduction, Professor Moran has with skill and accuracy set forth the proof that makes for this thesis. He has given in convincing statement the record of those years in which the loose-bonded and ineffectively ruled confederation gave way to the strongly welded and firmly self-governing federated States that now regard Union as the key to present prosperity and future greatness. Professor Moran has been singularly fortunate in his mental attitude—this has, seemingly, been dual: he has regarded the participants in the great movement that culminates in the Constitution as impersonally as it is possible for an author to regard a subject in which his interest is deep; but at the same time he has, because of adequate knowledge of the period treated by him, been able to go behind the veil that the past too often drops between the motives of men and the eyes of their successors, and gives not only the conventional account of the occurrences in the sequence that led to the Constitution but the motives of the men and the influences brought to bear upon them in that time of stress, when the Articles of Confederation were proving their defectiveness and men were demanding a firmer and stronger government, and yet insisting that the sovereignty of the several States be preserved.

There is in the volume before us a worth that transcends even the clarity of style, the wealth of interesting incident,

and the swift movement of events with their momentous consequence. The period of the making of the Constitution is filled with lessons for Americans—lessons that have had important bearing upon our country's history—lessons that have been well learned by the great statesmen who have made the government of the United States what it is to-day.

We may say then of this volume in *THE HISTORY OF NORTH AMERICA*: It sets forth the environment by which the makers of the Constitution were influenced, placing before the reader in terse and illuminating phrases the conditions, material and political, that faced the "Fathers"; it details the occurrences of those pregnant years that intervened between the close of the Revolution and the definite establishment of the Federal government, and it also contains the key to the policy that for more than a century has guided the United States; further, it describes not only the manner in which the compact of government was ratified, but it gives an account of the steps by which it became not only a symbol of union but an effective working plan for federative action. It is, therefore, a pivotal volume in its series, and one that every student of American history may profitably study.

GUY CARLETON LEE.

*Johns Hopkins University.*



## AUTHOR'S PREFACE

AN attempt has been made in this volume to set forth the defects of the Articles of Confederation, to note the causes leading up to the forming of a more perfect Union, to trace the steps in the formation and ratification of the Constitution and in its interpretation and development under Federal and early Republican control. The period with which the volume deals is distinctly constitutional, but an attempt has been made to give an adequate treatment to other phases as well. The period covered possesses both importance and unity. It is important because at the time of the narrative the permanent form of government under which we are now living was formulated and adopted; and it possesses unity because it witnessed the failure of one form of government and the formation, ratification, inauguration, interpretation, and development of another. The period is, comparatively speaking, complete in itself, since it begins with the inception of the Federal Constitution, and closes when that form of government is in good working condition; and yet the reader will observe that the treatment of the epoch is not complete in every respect. There are some phases of the subject which have been dismissed with a scanty treatment because of extensive elaboration in other volumes of the series.

It does not seem to be feasible even to mention at this time the names of all of those who have rendered assistance in the preparation of this volume, but the writer wishes to make grateful recognition of the many courtesies which he



received from those in charge of the Library of the Wisconsin Historical Society, as well as from the authorities of the Library of the University of Wisconsin. A large part of the work on the volume was done in the midst of these splendid collections of historical literature.

The thanks of the writer are also due, and are gratefully accorded, to his colleague, Mr. Edward H. Davis, Instructor in Economics and History in Purdue University, who has carefully scrutinized the proof sheets of the entire volume.

T. F. MORAN.

*Purdue University, La Fayette, Indiana.*

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*THE  
FORMATION AND DEVELOPMENT  
OF THE CONSTITUTION*

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MORAN



## CHAPTER I

### *DIFFICULTIES UNDER THE ARTICLES OF CONFEDERATION*

WHEN, on July 1, 1776, Congress adopted the famous resolutions of Richard Henry Lee, of Virginia, declaring "the United Colonies free and independent States," it became necessary for that body to provide some form of government to take the place of the authority of Great Britain which had been thus cast aside. These epoch-making resolutions were introduced into the Continental Congress by Mr. Lee, acting under instructions from his State, on the 7th of June, 1776. It was evident to most men of the time that things had gone too far for a reconciliation with the mother country. The spirit of independence was strong, and it was plain that the resolutions of Lee would pass. This being the case, committees were appointed on June 11th to formulate a declaration of independence and "to prepare and digest the form of a confederation to be entered into between these Colonies." On the 12th of July, 1776, the committee appointed to draft a form of government made its report to Congress through its chairman, John Dickinson, of Pennsylvania. This report embodied the substance of the now well-known "Articles of Confederation." The report of the committee was debated in Congress at intervals until November 15, 1777, at which time it was adopted with some amendments. It still remained for the States to ratify. There was no little opposition to the new plan in some localities, and the Articles of Confederation were not finally adopted by the States

until March 1, 1781. Maryland was the last State to ratify, its opposition being due largely to the ownership of public lands in the northwest by several of the States.

This, then, was the origin of the form of government under which the people of the United States were living at the time when our narrative begins. That period of American history preceding the adoption of the Constitution was one of turbulence and disorder of various kinds; and if we would appreciate to the fullest extent the critical nature of the epoch, we must make an analysis of the Articles of Confederation and note the extent to which they were instrumental in bringing about this widespread disorder.

The Articles of Confederation were based by the committee upon a plan of government submitted by Franklin to the Continental Congress on July 21, 1775. Although this plan was never acted upon by Congress, it was of material assistance to Dickinson and his committee in the performance of their task. The general outlines of the two plans are the same, and in many instances the exact words of Franklin were used by the later committee.

The Dickinson plan consists of thirteen sections and is styled: "Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia." The above States entered "into a firm league of friendship with each other," and retained their "sovereignty, freedom and independence."

The Congress of the Confederation consisted of one House, though as the bicameral system had long been in use both in Europe and America we might naturally expect it to have been a feature of the Articles of Confederation. The presence of the unicameral system was largely due to the influence of Franklin. He was always enamored of the simplicity of a Congress consisting of one House and was instrumental in the introduction of that system into the

Constitution of Pennsylvania and into the Articles of Confederation. Each State was represented in Congress by not less than two and not more than seven delegates. They served for a term of one year, but might be recalled by their respective States at any time in case they were not considered suitable representatives. The delegates were not eligible to serve for more than three years in any period of six and were paid by their respective States. In the determination of questions in Congress each State, small and large alike, was entitled to one vote.

In financial matters the States were also predominant. The expenses of the general government were "defrayed out of a common treasury," "supplied by the several States in proportion to the value of all land within each State;" and the taxes for paying the amounts thus due were "levied by the authority and direction of the legislatures of the several States." The Congress was given power to legislate on matters pertaining to the United States as a whole, but the assent of nine of the thirteen States was necessary to a decision in all important matters. A majority vote sufficed in ordinary cases.

There was no judiciary such as now exists in the United States. Congress itself was "the last resort on appeal" in cases arising between two or more States, and was given power to constitute courts for the determination of such cases.

Neither was there any executive authority corresponding to that of the president. There was a "President of Congress," but he was a moderator rather than an executive. He presided over the deliberations of the legislative body, but was not charged with the execution of the laws. There was, however, a "Committee of the States," consisting of one delegate from each State, which was "authorized to execute, in the recess of Congress, such of the powers of Congress, as the United States, in Congress assembled, by the consent of nine States shall, from time to time, think expedient to vest them with." There was,



then, no such separation of legislative, executive, and judicial functions as the framers of the Constitution subsequently strove for so earnestly. The entire governmental authority was vested in the legislative branch.

It was also set forth in the Articles that the Union thus formed should be perpetual, and that no amendment should be made to the plan unless the alteration was assented to by Congress and "afterwards confirmed by the legislatures of every State." This provision made the amendment of the Articles practically impossible.

It is evident even from this casual survey of the Articles of Confederation that they were defective in some very vital particulars. It is customary to declaim loudly concerning their defects and inadequacies, and to ascribe to them all that political and economic confusion which followed the close of the Revolutionary War. The matter has undoubtedly been overdone; for certainly all the confusion and impotency of the times did not emanate from a defective form of government. Yet it is true that the Articles of Confederation were "a rope of sand" and were not equal to the task imposed upon them.

The most serious defects of the Articles are obvious. The central government was essentially weak. It had no coercive power. Congress was in reality an advisory rather than a mandatory body. It could request and advise indefinitely, but could demand nothing. It could pass laws regarding offences, but could not punish transgressors. It had the power to declare war, but could only ask the various States to furnish the money necessary to equip and maintain the troops. Sometimes the money was forthcoming when asked for, more often it was not. It devolved upon Congress to determine the amount of revenue needed for the support of the government and to apportion the amount among the various States; but if the States did not see fit to respond, there was no method by which they could be coerced. The root of the difficulty lay in the fact that the government acted upon the States instead of upon individual

citizens. An individual may be coerced, but a State cannot. The payment of a tax may be enforced as against an individual, but requisitions upon a State are essentially feeble. Madison saw clearly the condition of affairs and offered a drastic remedy. Shortly after the Articles were ratified, he moved an amendment "to give to the United States full authority to employ their force, as well by sea as by land, to compel any delinquent State to fulfil its federal obligations." The amendment fortunately failed. It was offered in the right spirit and with a clear comprehension of the difficulty, but the public opinion of the time would not have sustained its execution. Had it been necessary to train the guns of the United States upon a delinquent member in this critical period, the feeble Union would have crumbled in disorder. There was not that spirit of national loyalty which preserved the Union in 1861. The importance of the Union had not as yet laid firm hold on men's minds. Webster and his colleagues had not eulogized it, and in 1783 the individual States occupied a more important place in the minds of their people than the central government. The passage and attempted enforcement of Madison's amendment would in all probability have resulted in a civil war, disastrous and even fatal in its consequences.

Again, Congress could decide disputes among the various States, but could not compel the States to abide by its decisions. It could make treaties with foreign powers, but could not compel the States to observe them; and commercial treaties negotiated by Congress would be of no avail, because the control of commerce was left in the hands of the States. Congress could not guarantee anything to the European nations, because the States might have thirteen different opinions in regard to a single matter. "In everything," as Alexander Johnston put it, "the States were to be sovereign, and their creature, the Federal Government, was to have only strength enough to bind the States into nominal unity, and only life enough to assure it of its own practical impotence."

No satisfactory results could be expected from such a form of government as this. The results obtained accorded nicely with the merit of the instrument. Under it the genius of American statesmanship was powerless. The instrument was obstructive. It was almost impossible for Congress to accomplish anything. In the first place, the consent of nine States was necessary for any important action. Five States could thus block the wheels of legislation effectively. A clique consisting of five Southern or New England States or of five small and jealous States could hold out successfully against the remaining eight. The situation seemed hopeless, since it was practically impossible to amend the Articles, for in a time of jealousies and conflicting interests it was improbable that all the States would agree to the necessary amendments. It was subsequently found necessary to discard the Articles and draw up a form of government upon different lines. This was a revolutionary proceeding, but the Philadelphia Convention was obliged by common sense and the force of circumstances to take the step. The history of more than a century has justified and commended the action of the Convention. The Gordian knot was cut to a good purpose.

The history of the United States under the Articles of Confederation is both humiliating and distressing. The years from 1783 to 1789 of their impotent control, with its attendant disorganization, have well been termed the critical period of American history. A review of the facts in the case will convince one that the term is apt. When the news came to America in 1783 that a treaty of peace had been concluded with Great Britain and that the war was in reality over, Thomas Paine exclaimed in the *Crisis*: "The times that tried men's souls are over." This was true in one sense but false in another. The times which were to follow were destined to "try men's souls" in a manner quite as exasperating. The need for military genius was now a thing of the past, but the demand for constructive statesmanship and civic patriotism was never more imperative. Ominous

signs of disintegration were apparent even before the close of the war. For three years before the struggle was terminated, a constant effort was necessary to bolster up the failing credit of the United States and to get money enough to maintain the army. It was only by the heroic efforts of Washington and Robert Morris that the army was kept in the field.

Now that the war was over, the bond which held together the incoherent States was weakening perceptibly and things were approaching a crisis. No one saw this more clearly than did Washington. On June 8, 1783, he addressed a circular letter to the governors of the various States, in which he discussed the "present crisis," as he termed it, exhaustively and earnestly. It is evident from the tone of his letter that he realized fully that the storm and stress under which the American people had been living did not vanish with the echoes of Yorktown. "This," he said, in speaking of the United States, "is the time of their probation; this is the moment when the eyes of the whole world are turned upon them; this is the moment to establish or ruin their national character forever; this is the favorable moment to give such a tone to our federal government, as will enable it to answer the ends of its institution, or this may be the ill-fated moment for relaxing the powers of the Union, annihilating the cement of the confederation, and exposing us to become the sport of European politics, which may play one State against another, to prevent their growing importance, and to serve their own interested purposes. For, according to the system of policy the States shall adopt at this moment, they will stand or fall; and by their confirmation or lapse it is yet to be decided, whether the revolution must ultimately be considered as a blessing or a curse; a blessing or a curse, not to the present age alone, for with our fate will the destiny of unborn millions be involved." In this letter, which he termed his "legacy" to the American people, he argued forcibly and with great sincerity for "an indissoluble union of the States under one federal head," "a sacred regard to public justice,"

"the adoption of a proper peace establishment," and "the prevalence of that pacific and friendly disposition among the people of the United States, which will induce them to forget their local prejudices and policies." He asked the States "to make those mutual concessions, which are requisite to the general prosperity" and "to sacrifice their individual advantages to the interest of the community." He asserted that these reforms were essential "to the existence of the United States, as an independent power," and that without them "everything must very rapidly tend to anarchy and confusion." This was the situation in 1783 and matters became even worse in the subsequent years of the critical period. No great improvement could be expected under what Randolph termed "a government of supplication." As we review the deplorable state of affairs existing under the Articles, we shall probably agree with Laboulaye when he says that "the new-born republic just missed dying in its cradle."

It may also be of interest to note the comments which were made by foreign observers upon the condition of affairs in America. It may be said in general that those foreign observers were for the most part pessimistic in their utterances in regard to the perpetuity of the American republic. This is not strange. They saw the wrecks of federalism and of republican forms of government from the days of Ancient Greece to their own time. The examples of the Achaian and Ætolian Leagues, the Roman Republic, the Italian City Republics, and others, were constantly before their minds. These had failed, some of them under seemingly more favorable conditions; why, then, should the American Republic hope to survive? Josiah Tucker, Dean of Gloucester, an acute observer and a broad-minded man, who, to say the least, was not prejudiced against the American cause, expressed himself thus: "As to the future grandeur of America, and its being a rising empire under one head, whether republican or monarchical, it is one of the idlest and most visionary notions that ever was conceived even by writers of romance.

The mutual antipathies and clashing interests of the Americans, their difference of governments, habitudes, and manners, indicate that they will have no centre of union and no common interest. They never can be united into one compact empire under any species of government whatever; a disunited people to the end of time, suspicious and distrustful of each other, they will be divided and subdivided into little commonwealths or principalities, according to natural boundaries, by great bays of the sea, and by vast rivers, lakes, and ridges of mountains." Such were the views of an intelligent and unprejudiced critic. Frederick the Great of Prussia, one of the best friends in Europe of the American cause, expressed himself to the same effect. He could not see how a republic could exist covering such a vast expanse of territory. He conceived that it would crumble because of its own weight. The Roman Republic had done so, and why should not history repeat itself? Republicanism had never been successful on such a large scale. It seemed well adapted for the government of some of the tiny States of Europe, but could never be made a success on such a magnificent scale as was proposed in the New World.

These arguments appear quite plausible at first thought; but a careful examination will reveal the fact that there were fundamental differences between the American Republic and those governments with which it was then compared. The Roman State, for example, was a heterogeneous mass. It was made up of a score of nationalities held together, not by common interests, but by external force. It comprised within its bounds all possible degrees of civilization. The essential elements of national unity were conspicuously lacking. There were marked differences in race, language, and religion, thus giving rise to fierce antagonisms and to diversity of interests. The Roman army was the only unifying factor in the Roman State, and the unity thus secured was forced and unnatural. There were none of those unifying elements which Sir John R. Seeley sets forth

in his *Expansion of England* as essential to a world State. Then again, there were moral reasons as well as political ones for the downfall of the Roman State. It was honey-combed with immorality. Vice and sensuality had taken the place of patriotism and civic pride. This fact made it comparatively easy for the rugged Germans to take possession of the Empire in the early centuries of the Christian era.

Then, too, the principle of representation, so indispensable to modern republics, was unknown to the people of antiquity. Without this political expedient the area of the republic must of necessity be small. With it there is practically no limit to the extent of territory over which the republican form may hold sway. And again, the American people have exhibited a genius for practical politics which is unusual. It is not strange, of course, that this characteristic was not recognized by the European observers of the eighteenth century, since it was not well developed at that time. It is a fact, however, that the American people have shown themselves capable of getting good results from inferior political contrivances. James Bryce, in his *American Commonwealth*, calls attention again and again to the fact that the American people in their institutions frequently run counter to the dogmas of accepted political theory, but that they are able to secure good results because of their genius for administration. However, as remarked above, the European critics of the eighteenth century can hardly be censured for not recognizing a trait of the American character which was largely latent in 1783. Again, the great inventions of the close of the eighteenth century and the early part of the nineteenth made the success of the American Republic more easy and certain. The Roman roads were a very important element in the solidarity of the Roman State, and Augustus showed himself a far-sighted statesman in extending and improving them. He appreciated the importance of good transportation facilities from the military and governmental points of view. It seems now almost providential that a series of inventions should have been made just

at the time when they were most needed in the government of the American Republic. James Watt, John Fitch, Fulton, and Stephenson, by their inventions, improved transportation facilities to such an extent that all doubt was practically removed regarding the success of the American experiment. The critics of the eighteenth century could not take into account the influence of these inventions which were made subsequent to their time and so opportunely for the success of the American Republic.

Having noted the generally deplorable condition of American affairs at this time, it remains for us to examine, somewhat in detail, the causes of this national humiliation. In the first place, there was a conspicuous and a lamentable lack of national unity among the States. The union sentiment had not yet been developed. There were differences in race and religion which had not been wholly reconciled. Sectional interests tended to weaken the bond of union, and the small States were jealous of the large ones. There are reasons underlying all these conditions.

The idea which the several States had of their own "sovereignty" was the most formidable obstacle to national unity. Washington, Hamilton, Madison, and a few others appreciated the real status of the States, but the majority of the people and their leaders did not. It was quite generally felt that the States were sovereign, and that when the union was made under the Articles they yielded something of their sovereignty to the general government, when, as a matter of fact, the States were never sovereign in the true sense of that term. As colonies they were under the rule of Great Britain and united through the medium of the crown. When the first Continental Congress was convened, in 1774, even before independence was decided upon, a sort of union was acknowledged by the sending of delegates to that body. A committee was appointed *before* the Declaration of Independence was made to draw up Articles of Confederation and perpetual union for the colonies. In short, there never was a time when a union of some sort



did not exist and was not recognized as existing. There was a union before the colonies became "free and independent States." The union, then, was older than the States, and the idea that the States were conceding something from their absolute sovereignty to make a union was an entirely mistaken conception. No American State had ever figured before the world as a sovereign power.

It should be noted that there was one provision in the Articles which made for national unity. It was specified that the citizens of any State should be entitled to all the privileges and immunities of the people of the several States, and that full faith and credit should be given to the records, acts, and judicial proceedings of every other State. This interstate comity was an important element in bringing about the solidarity of the Union. It is, however, practically the only such element in the instrument.

There was a valid reason why the governments of the States appealed to the people of the time more forcibly than did the national government. The State governments were in good running order. They were real governments. They touched the lives of the people at a thousand points. They protected the property of the citizens, built and maintained the highways, and supported the schools. The national government, on the other hand, was something, in a measure, new and strange. It had little to do with the everyday life of the people, but was looked upon as a convenient agency for the management of foreign affairs. The people consequently felt that their State governments were more essential to their well-being than was the central government, and they bestowed their allegiance accordingly.

But while the people were loyal to their several States, the States were not loyal to each other. Sectional and commercial interests disturbed their relations, and there was a jealousy of long standing between the large and the small States. Such States as Delaware and Rhode Island were fearful that they would be deprived of their liberties by Massachusetts and Virginia and the other more populous

commonwealths. Their distrust of the large States was second only to that which they had previously entertained toward the king.

Some of the more tangible and concrete difficulties under the Articles of Confederation yet remain to be spoken of. It has been noted that Congress was dependent upon the good will of the States for revenue to carry on the general government. It was necessary for Congress to pay the interest at least upon the public debt and to provide for the current expenses. That body was not allowed by the Articles to levy duties or taxes of any kind, and hence was entirely dependent upon "requisitions."

The system of requisitions worked as might have been expected. Patrick Henry was unwilling to omit that "darling word" from his vocabulary, yet the system was barren of results. A concrete example will serve to illustrate its operation. In 1781 Congress estimated that the current expenses of the government for the year would be \$9,000,000. It was proposed to raise \$4,000,000 of this sum by a loan, and the remaining \$5,000,000 was apportioned among the thirteen States. At the close of the year less than one-half a million had been paid into the treasury of the United States, and four of the States had made no contribution whatever. Only twenty per cent of the requisitions of 1783 had been paid two years later. Some of the States flatly refused to meet their obligations, and others did so only in part. All were more or less dilatory in sending in their quotas, and the government was embarrassed by the delay. Robert Morris was appointed superintendent of finance in 1781, but resigned his post in despair after struggling with its duties for three years. After 1784 the finances were managed by a committee. The results were deplorable.

The financial statistics of the time are conflicting and confusing. However, there are some few figures which may be looked upon as substantially correct. The total amount asked for by Congress during the period extending

from 1781 to 1788 was about \$16,000,000. Of this sum the States actually paid about \$3,500,000. During fourteen months in 1784-1785 the government obtained from requisitions about \$400,000—an amount not sufficient to pay the interest on the public debt, to say nothing of the other current expenses of the government. Loans were made in Europe at usurious rates of interest, and the national credit was rapidly failing. Securities were depreciating in value, and in one instance at least were quoted at ten cents on the dollar. Each State had its own debt to pay, and often excused itself from meeting its national obligations on the ground that the other States were not meeting theirs. In this emergency Congress had no recourse but to wait and to hope. The States could not be coerced, and Congress could not levy a tax for its own support.

There was, too, a natural disinclination among the people to respond to the calls of Congress for money, because much of it was intended for the payment of the war debt. It was impossible to arouse very much individual or national enthusiasm over the subject of debt paying. Many persons were only too willing to let the dead past bury its dead. The national government—if it may be called a government at all—soon found itself without revenue and without credit. The interest on the public debt, to say nothing of the principal, remained in a large measure unpaid. Step by step, the nation was hurrying on to the verge of bankruptcy.

John Adams declared in 1784 that American credit was dead. He had good reason, too, to know whereof he spoke. He had just been going the rounds of the brokers and usurers of Amsterdam in order to obtain money for the maintenance of the government, and succeeded in doing so only after infinite pains and at an exorbitant rate of interest. It was quite the usual custom for the home government, when pressed for money, to draw upon the foreign ministers. It then devolved upon the ministers to beg or borrow the money in order that the drafts might not be protested. John Adams suddenly found that the bankers of Amsterdam



Proclamation disbanding the Revolutionary army. From the original  
in the Library of Congress, Washington.



held such drafts drawn upon him to the amount of a million florins. He did not have the money to meet the emergency, and, after appealing in vain to the regency of Holland, he was compelled to resort to the Shylocks of Amsterdam and to submit to their terms. John Jay, as minister to Spain, and others at the various European capitals endured similar experiences. It is no wonder, then, that Adams came to the conclusion that American credit was dead.

The issues of large amounts of irredeemable paper money by the various States did much to add to the confusion of the times. It was found convenient to issue this money in large amounts for debt-paying purposes. This "rag money" naturally depreciated in value and caused deplorable economic disturbances. There was abundant opportunity for speculators and sharpers to ply their trade, and they availed themselves of the opportunity to the utmost. All the evils ensued which could possibly result from a disordered currency. Men had mortgages on their houses and lands and were unable to pay them, although they had bales of Continental currency stowed away in their homes. Foreclosures were frequent, suits for the payment of debt were abundant, and litigation crowded the facilities of the courts. In Massachusetts things became more acute than elsewhere. In that State the discontented debtors, against whom suits were being brought, assembled under the leadership of Daniel Shays, a captain in the Continental army, and determined to prevent the courts by force from finding judgments against them. The nucleus of the company was composed of industrious and sincere men who had been worked into a state of frenzy by brooding over real and imaginary grievances. They determined to take the matter into their own hands and to prevent the courts from acting. Consequently, in December, 1786, Shays and his men appeared at Worcester and compelled the Supreme Court to abandon its session in that place. A few days later the proceedings of the court were interfered with at Springfield, and in the following January a mob made an attack upon

the federal arsenal located in that city. Things were now assuming a very dangerous aspect. The character of the insurgents had undergone a great change. The discontented and vicious rabble, ever ready to promote disturbance, had joined the company of Shays, and there was danger that the State government of Massachusetts would be overthrown.

It is not our purpose to enter into the details of this rebellion further than to note its general cause and character. It is indicative of the disorder of the time and illustrates the inadequacy of the general government. The rebellion was put down, not by the arm of Congress, which was powerless to interfere, but by the efforts of James Bowdoin, Governor of Massachusetts, with the coöperation of some public-spirited citizens who supplied the necessary funds. Governor Bowdoin was "the strong deliverer" of his State, but his efforts were hardly appreciated. He was defeated for reelection a few months after the outbreak, because of his "pernicious activity," and because the people feared that he would not pardon those of Shays's followers who had been tried and convicted for participating in the rebellion. Bowdoin's successful competitor, John Hancock, promptly pardoned the offenders. The fact is significant as showing that the spirit of the people was not yet in favor of law and order. However, James Bowdoin will always be held in grateful remembrance as the savior of Massachusetts, and possibly of the Union. His State might have been ravaged from the Berkshire Hills to Cape Cod before Congress could have given the necessary assistance. Then, too, the spirit of Shays might have been contagious. In fact, there were symptoms of disorder in other States which indicated that such was the case. The action of Governor Bowdoin is all the more commendable because he was not sustained as he should have been by the public opinion of his own State. When the mob came to Springfield to obstruct the court, they reported that they found that body "mellow enough." The judges of the court are said to have invited the rebel leaders to dine with them at the

hotel. Neither was Congress asked to render any aid. It was argued by factionists and anti-Federalists that it would not be in keeping with the dignity of the great State of Massachusetts to allow federal troops upon its soil for the purpose of suppressing an insurrection. In fact, a resolution stating that federal aid might be needed and sought was defeated on this ground in one of the Houses of the Massachusetts legislature. Congress did, however, deem it to be its duty to take some action when it was apparent that the spirit of rebellion was spreading. It accordingly asked the States to furnish troops for a campaign against the Indians of the northwest, not daring to make known the real purpose for which the soldiers were to be used.

It might be added in this connection that Massachusetts was not the only State that was infatuated by the desire for paper money. The delusion was widespread in 1785-1786. All economic laws, and even the teachings of common sense, were utterly disregarded. In some instances the "rag money" was made legal tender, and in other cases where it was not persons were practically compelled to accept the worthless stuff. The result of the whole matter was that a few speculators became rich, while the masses of the people and the States themselves became bankrupt.

The paper money delusion, the rebellion led by Daniel Shays, and the apparent necessity of Congressional regulation of commerce, did much to convince the people that something should be done to strengthen the central government. The leaders of political thought had come to this conclusion several years before; and now the masses of the people, who hitherto had spurned Congress and exalted their State governments, were beginning to see that much of the disorder of the time was due to the weakness of the central authority and that to correct these disorders they must strike at the root of the matter and amend the form of government. This idea developed very rapidly in the two years preceding the Philadelphia Convention of 1787.



Boundary disputes have always harassed States and nations, and it is not strange that contests over territory should arise in the United States at this time when boundaries had not been accurately located. The Articles of Confederation provided that disputes arising among the various States should be adjusted by special commissioners or courts organized by Congress. It was found comparatively easy to reach a decision in these interstate disputes, but to compel the States interested to abide by that decision was quite another matter. In many instances it was not even thought worth while to ask Congress to determine the matter at all.

In 1782 a dispute arose between Pennsylvania and Connecticut concerning the ownership of territory in the valley of Wyoming. This dispute was settled in the manner specified in the Articles and in favor of Pennsylvania. Connecticut, for the time, acquiesced in the decision. In other cases disputes were not so easily settled. It was not easy to persuade, and no means were at hand to compel, a State against which a decision had been made to submit to the ruling of the federal tribunal. Even in the Wyoming Valley case, Connecticut was never wholly reconciled to the decision, and the enmity between the two States concerned all but resulted in civil war in 1784.

The dispute between New York and New Hampshire over the territory now embraced in the State of Vermont was the cause of greater difficulty. The grants and charters of the time were necessarily vague and it was practically impossible to locate exact boundaries. For several years prior to 1774 the two States had contended strenuously but inconclusively for the possession of the Green Mountain region. New York finally took steps to make good its claim by force of arms and New Hampshire prepared to do the same. At this critical juncture, Washington used his influence with the Governor of New York, and the dispute was temporarily settled in 1784. The whole matter, however, was not finally disposed of until the adoption of the

Federal Constitution. In the meantime, arson, murder, and a species of guerilla warfare prevailed at intervals in the Green Mountain district, and within it the central government was unable to assert its authority.

Disputes of a similar character were occurring almost constantly. In 1784 an effort was made to establish the new State of Franklin. Some inhabitants of eastern Tennessee, then under the jurisdiction of North Carolina, joined with some citizens of Virginia in an effort to create the new commonwealth. In 1786 a convention was called to bring about a separation of Maine from Massachusetts. Liberties of this kind were frequently taken and the decisions of Congress, if any were made, were treated lightly. These disputes may seem to be but mere incidents of pioneer life and of no particular importance. In themselves they are not particularly significant, but as symptoms of a disordered republic they emphasize the inadequacy of the Articles of Confederation and the pressing necessity for a new and stronger form of government. It now seems almost providential that the Philadelphia Convention of 1787 should have rescued the struggling federation from the abyss toward which it was rapidly drifting.

The army, too, was the source of no little difficulty under the Articles of Confederation. Not being able to obtain money from the States, Congress was unable to pay the soldiers. This produced discontent in the army and dread in Congress. It was feared that the soldiers, despairing of obtaining their just dues, might usurp control of the government, and thus create a military despotism. There was, in fact, some ground for this fear. The temper of the army was ugly, and mutterings were heard among the officers and men. While this feeling was at its height, Colonel Louis Nicola, an officer in the Continental army, wrote a letter to Washington urging him to save his beloved country from anarchy and confusion by accepting the crown from the army. Washington's reply was sincere and decisive enough to put an end to the scheme of Nicola and his

followers. There was, probably, no real danger of a reversion to monarchy; but the incident shows the critical condition of the government. The appearance of a Cromwell or a Napoleon might have changed the current of our history very materially.

The Newburgh address of March 11, 1783, gives evidence of a similar state of feeling among the soldiers. The baneful influence of General Gates and his associates appears again in the ranks of the army. An anonymous address was issued to the troops by Major John Armstrong and Colonel Barber, of Gates's staff, in which the soldiers were practically urged to mutiny. The address was treasonable and inflammatory in the extreme. After being told that their country had trampled upon their rights, disdained their cries, and insulted their distresses, the soldiers were assured that even worse treatment was in store for them in the future unless they asserted themselves. "If this, then, be your treatment," the address continues, "while the swords you wear are necessary for the defense of America, what have you to expect from peace, when your voice shall sink, and your strength dissipate from division; when those very swords, the instruments and companions of your glory, shall be taken from your sides, and no remaining mark of military distinction left but your wants, your infirmities and your scars? . . . oppose tyranny, under whatever garb it may assume, whether it be the plain coat of republicanism, or the splendid robe of royalty; . . . awake, attend to your situation and redress yourselves! If the present moment be lost, every future effort is in vain; and your threats then will be as empty as your entreaties now. . . . Let two or three men . . . draw up your *last remonstrance*, for I would no longer give it the suing, soft, and unsuccessful epithet of *memorial*. . . . Tell them . . . that the wounds, often irritated and never healed, may at length become incurable; and that the slightest mark of indignity from Congress now must operate like the grave, and part you forever . . ."

An anonymous call had also been sent out for a meeting of officers to consider the grievances of the army. The wonderful good sense and all-pervading influence of Washington were again evident. He balked the plans of the conspirators completely. He did not attempt to suppress the feeling among the soldiers, but he controlled it effectively. Instead of prohibiting the meeting so irregularly called, he simply postponed it a few days and appointed General Gates to preside. There may have been irony in the appointment. While the meeting was in progress Washington appeared and by means of a forcible and touching address turned the tide against the conspirators. He did not mince matters. His rhetorical arrows flew straight. His remarks upon the author of the address were peculiarly scathing. He referred to him as a man entitled to more credit "for the goodness of his pen" than "for the rectitude of his heart." He adroitly conjectured that the writer of the manifesto might have been an emissary from the British, whose purpose was to sow "seeds of discord and separation between the civil and military powers of the continent." The address was a telling one, and a little incident at the opening added to its effectiveness. Washington had never used glasses in public before that day, but he found it necessary to do so while reading his address. Colonel Cobb tells us that as he took the manuscript of his address from one pocket and his spectacles from another, he remarked: "Gentlemen, you will permit me to put on my spectacles, for I have not only grown gray, but almost blind, in the service of my country." The scene was very affecting. Washington had given his services to his country without money and without price, and his simple remark went straight to the hearts of his hearers. "This little address," adds Colonel Cobb in his letter, "with the mode and manner of delivering it, drew tears from [many] of the officers." Washington had carried the day. A motion declaring confidence in the justice of Congress and expressing abhorrence at the infamous proposals of the manifesto was passed.

This crisis, then, was tided over by the influence and skill of the commander-in-chief. It illustrates, however, the critical nature of the period with which we are dealing.

The acts of the soldiers in these concluding days of the war were not always commendable in every respect, and as a result there was no little distrust of the army. This fact is exemplified by the storm of protest with which the organization of the "Cincinnati" was received.

Before finally disbanding in 1783, the officers of the army formed a society whose object was to further the friendly relations of the members and to preserve the memories of the Revolution. Washington was chosen president, and the society was to be perpetuated by the admission of the eldest sons of the members. This provision added an aristocratic feature to the already objectionable military one. There was also to be a class of members consisting of distinguished persons who had had no part in the war. The organization was patriotic and philanthropic in character and one to which we should not expect any serious objection. However, when the news of its organization was spread abroad, a protest long and loud was sent up from all parts of the country. Fears of a military despotism and of a hereditary aristocracy were expressed on all sides, and the new society was looked upon with marked disfavor. Even Samuel Adams was unduly alarmed. In a letter to Elbridge Gerry he expressed the fear that the members of the order of the Cincinnati might acquire large tracts of western lands and import peasants from Europe for the purpose of establishing the feudal system. To prevent such a calamity, Congress passed an act declaring that no person holding a hereditary title should be admitted to citizenship in any of the new States formed from the western territory.

Commerce was one of the most important and difficult subjects with which the new republic had to deal. It was also a subject which was handled in a most unskilful manner and one from which no end of difficulties arose. It has been already stated that Dickinson's draft of the Articles

of Confederation was based upon a plan of government submitted to Congress by Dr. Franklin in July, 1775. There are some important differences between the two documents, and it is interesting to note that in the matter of regulating commerce the draft by Franklin is far superior. Franklin's plan provided for the regulation of commerce by Congress, while that of Dickinson put the matter in the hands of the various States, except when such regulation interfered with any stipulations which might be made "in pursuance of any treaties already proposed by Congress to the courts of France and Spain." This provision made the negotiation of commercial treaties with European governments a very difficult if not impracticable task. A commission consisting of Jefferson, Franklin, and Adams was able to accomplish practically nothing in this respect. They opened negotiations with fifteen European States and succeeded in making one unimportant commercial treaty. The European nations saw clearly the impotence of our central government and knew that the States with their power to regulate commerce could nullify any treaty which might be made. They preferred not to play at treaty making. In fact, the representatives of Great Britain inquired very pertinently of our commissioners whether they had credentials from each of the thirteen States or only from Congress. Some of the European nations rejoiced at this state of affairs. They were pleased that they had a good excuse for not making treaties with the United States, as they could then prey upon American commerce unhampered by treaty obligations.

There were commercial difficulties at home as well as abroad. The folly of allowing the States to regulate commerce was made evident in a commercial warfare which sprang up among them. Each State enacted tariff laws adapted to its own local conditions. In a short space of time each was attempting to gain an advantage over its neighbors, and a series of retaliatory measures followed. Three New England States closed their harbors to English ships; and Connecticut invited commerce by a free trade policy in

respect to England, while it imposed a tariff on goods coming from Massachusetts. New York was particularly aggressive and mercenary. Its commercial warfare with Connecticut and New Jersey is a case in point. New York City was being supplied at the time with wood from Connecticut and with farm produce of various kinds from New Jersey. It occurred to George Clinton and his followers that a large amount of money was being taken out of the city, without adequate return, by the woodmen and farmers of the adjacent States. The result was a protective law and a navigation act directed at these obnoxious neighbors. Entrance fees and duties were exacted from the Connecticut and New Jersey men who wished to sell their goods in the New York market. A spirit of anger and retaliation was at once aroused. Connecticut merchants agreed to suspend all commercial dealing with their sister State for a year, and a fine of \$250 was imposed for breaking the agreement. New Jersey also retaliated. New York had recently built a lighthouse on Sandy Hook. Sandy Hook was in New Jersey, and the lighthouse was immediately taxed £30 per month. These are examples of the manner in which the States regulated commerce. However, they clung tenaciously to their prerogative in this respect. In 1781 Congress proposed that the general government be allowed to levy a duty of five per cent on imports to aid in the payment of the war debt, the duty to cease when the debt was liquidated. This seemed to be a very reasonable proposition, but obstreperous little Rhode Island voted against it, and Virginia withdrew its assent after once voting in its favor. The proposition accordingly failed, as a unanimous vote was necessary for its success.

Not a little embarrassment ensued from the failure of the United States to comply with the provisions of the treaty of peace with Great Britain. The faith of the people was pledged to the payment of the debts due to British creditors, and compensation to the Loyalists was recommended. But the debts were not being paid and the confiscated estates

of the Loyalists were not being returned. Because of the obstructive policy of the States, Congress found it impossible to carry out the provisions of the treaty in these respects. At least seven of the States passed acts making it impossible to collect money for this purpose. This action was excused on the ground that the British had carried away slaves from this country at the close of the war and had not paid for them. Richard Henry Lee urged the repeal of these obstructive laws, but Patrick Henry declared that he would not assent to such a step until the British had paid for the slaves which they had carried away. It is undoubtedly true that some slaves were taken to England at the close of the war, but the grievance was by no means so great as it was represented to be. However, because the debts were not being paid, Great Britain refused to surrender the western posts. This retaliation was both expensive and humiliating. It encouraged the Indians to make attacks upon the frontier settlements and deprive the Americans of the Indian fur trade, which was very profitable at this time. It is said that in 1787 \$1,200,000 worth of furs was sold in London. The London merchants were very desirous of retaining this profitable business. The refusal of the Americans to pay the British debts according to the stipulations of the treaty furnished an excellent pretext for the retention of the posts and the enjoyment of the lucrative fur trade.

The weakness of the government was also painfully illustrated in its dealings with the Barbary States. The States of northern Africa had long been noted for their robbery, piracy, murder, and blackmail. While uttering fair words they were committing foul deeds. In the days of the Confederation, they turned their attention to the commerce of the American States. American vessels were seized and plundered, and American citizens were exposed for sale in African slave markets. All this, too, was done with impunity, as the American government was too weak to protect either the persons or the property of its citizens. In 1785



Congress recommended the construction of five warships, but could do nothing more than recommend, and the ships were not built.

It was impossible, of course, for Congress to maintain much of its strength or dignity through this series of humiliating events. The best men in the nation had flocked to the first Continental Congress, but under the Articles of Confederation a striking change was experienced. Men no longer considered the halls of Congress a favorable place for their best efforts. The most energetic and able men sought other fields of activity. They went into the army, served in the legislatures of their States, or found places in the diplomatic service. The membership of Congress was declining in numbers as well as in ability. Instead of the possible ninety-one members, there were usually only fifteen or twenty present, representing, perhaps, a minority of the States. When Washington's resignation was received by Congress, there were only twenty members present, representing seven States. Frequent delays were occasioned by lack of a quorum. From October of 1783 to June of 1784 there was no time when the requisite nine States were represented so that the treaty of peace might be ratified. It was cheaper for the States to send small delegations, or none at all. There was little interest in the matter, in fact, and few aspired to the perfunctory honor. The salary, too, was usually small and sometimes was not paid at all. Under such circumstances as these, Congress could hardly exist. On one occasion it practically expired. It adjourned in June, 1784, and left the affairs of the government in the hands of a committee consisting of one member from each State. This committee was to have charge of affairs until Congress met again in October; but, tired of incessant wrangling, it disbanded in August and left the country without a central government.

To add to the humiliation of Congress, that body did not have a fixed place of meeting, but was compelled to migrate from city to city in a very undignified manner. In the

summer of 1783, Congress was in session at Philadelphia when eighty deserters from the army came to that place to demand their back pay. The members of the national legislature were compelled to submit to every form of insult that drunken rowdyism could suggest. The people of the city and State took no steps to protect the persons and dignity of Congress; and as that body was unable to protect itself, it hastily withdrew from Philadelphia and resumed its sessions in the college halls at Princeton, New Jersey. Philadelphia at the time was a city of thirty-two thousand inhabitants,—the largest in the United States,—but was unable or unwilling to protect the national Congress from the attacks of fourscore drunken and mutinous soldiers.

The events of these years set serious men to thinking. In 1786 Grayson wrote to Madison: "I am . . . in no doubt about the weakness of the federal government. If it remains much longer in its present state of imbecility, we shall be one of the most contemptible nations on the face of the earth." Washington, as usual, made a correct diagnosis of the case and suggested the proper remedies. "It is clear to me as A, B, C," he said, "that an extension of federal powers would make us one of the most happy, wealthy, respectable, and powerful nations that ever inhabited the terrestrial globe. . . . I predict the worst consequences from a half-starved, limping government, always moving upon crutches and tottering at every step."

The most useful men of the period were Washington, Hamilton, and Madison. This noble triumvirate did more than all others combined to bring order out of chaos. The other great men of the time were on foreign missions, were infatuated with the States Rights theory, or were incapacitated in some other respect. Patrick Henry and George Clinton exalted their States above the national Union. John Hancock was in retirement. Samuel Adams had done his work as "Father of the Revolution," and was not enthusiastic over the national idea. Jefferson, Franklin, and John Adams spent a great deal of their time abroad. Only

John Jay and Robert Morris were available at this time to aid the great triumvirate in the tremendous task of rehabilitating the government.

No man of the time had a keener insight into the working of political institutions than Alexander Hamilton. At the time that the present Constitution was before the people for ratification, Hamilton discussed in the *Federalist* "the insufficiency of the present Confederation to the preservation of the Union." It will be interesting in concluding the present chapter to see what the evils of the Articles of Confederation were as viewed by his practiced eyes. We will allow him to state the case for the most part in his own eloquent and impressive words. "It may perhaps be asked," he states at the outset, "what need there is of reasoning or proof to illustrate a position which is not either controverted or doubted, . . . and which in substance is admitted by the opponents as well as by the friends of the new Constitution?" . . . "something is necessary to be done to rescue us from impending anarchy. The facts that support this opinion are no longer objects of speculation. They have forced themselves upon the sensibility of the people at large," and have extorted from the upholders of the present form "a reluctant confession of the reality of those defects in the scheme of our federal government, which have been long pointed out and regretted by the intelligent friends of the Union.

"We may indeed with propriety be said to have reached almost the last stage of national humiliation. There is scarcely anything that can wound the pride or degrade the character of an independent nation which we do not experience. Are there engagements to the performance of which we are held by every tie respectable among men? These are the subjects of constant and unblushing violation. Do we owe debts to foreigners and to our own citizens contracted in a time of imminent peril for the preservation of our political existence? These remain without any proper or satisfactory provision for their discharge. Have

we valuable territories and important posts in the possession of a foreign power which, by express stipulations, ought long since to have been surrendered? These are still retained, to the prejudice of our interests, not less than of our rights. Are we in a condition to resent or to repel the aggression? We have neither troops, nor treasury, nor government. Are we even in a condition to remonstrate with dignity? The just imputations on our own faith, in respect to the same treaty, ought first to be removed. Are we entitled by nature and compact to a free participation in the navigation of the Mississippi? Spain excludes us from it. Is public credit an indispensable resource in time of public danger? We seem to have abandoned its cause as desperate and irretrievable. Is commerce of importance to national wealth? Ours is at the lowest point of declension. Is respectability in the eyes of foreign powers a safeguard against foreign encroachments? The imbecility of our government even forbids them to treat with us. Our ambassadors abroad are the mere pageants of mimic sovereignty. Is a violent and unnatural decrease in the value of land a symptom of national distress? The price of improved land in most parts of the country . . . can only be fully explained by that want of private and public confidence . . . which have a direct tendency to depreciate property of every kind. . . . To shorten an enumeration of particulars which can afford neither pleasure nor instruction, it may in general be demanded, what indication is there of national disorder, poverty, and insignificance that could befall a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes? . . . The great and radical vice in the construction of the existing Confederation is in the principle of LEGISLATION for STATES or GOVERNMENTS, in their CORPORATE or COLLECTIVE CAPACITIES, and as contradistinguished from the INDIVIDUALS of whom they consist. . . . We must extend the authority of the Union to the persons of the citizens,—the

only proper objects of government . . . In our case, the concurrence of thirteen distinct sovereign wills is requisite, under the Confederation, to the complete execution of every important measure that proceeds from the Union. It has happened as was to have been foreseen. The measures of the Union have not been executed; the delinquencies of the States have, step by step, matured themselves to an extreme which has, at length, arrested all the wheels of the national government, and brought them to an awful stand. Congress at this time scarcely possesses the means of keeping up the forms of administration till the States can have time to agree upon a more substantial substitute for the present shadow of a federal government. . . . Each State, yielding to the persuasive voice of immediate interest or convenience, has successively withdrawn its support, till the frail and tottering edifice seems ready to fall upon our heads, and to crush us beneath its ruins." Such were the views of Alexander Hamilton.

It would be a mistake, however, to suppose that the Articles of Confederation served no good purpose. They certainly strengthened the union idea. They were educational in character and prepared the way for a more perfect form of government. "This service alone," remarked John Marshall, "entitles that instrument to the respectful recollections of the American people, and its framers to their gratitude." It is probably true also that a stronger form of government would not have been ratified by the States at the time. The jealousy of a central government on the part of the States was such that the ratification of the Articles, weak as they were, was no easy matter. Bancroft is undoubtedly correct when he says of the Articles as a form of government, "a better one could not then have been accepted; but, with all its faults, it contained the elements for the evolution of a more perfect union."





Oliver Ellsworth and his wife.

*After the original painting in the Wadsworth Athenaeum, Hartford, Connecticut.*

## CHAPTER II

### *GENERAL ECONOMIC AND SOCIAL CONDITIONS*

AN attempt will be made in the present chapter to set forth in a general way the economic and social conditions under which the people of the United States were living during the period of the Confederation. A knowledge of these conditions will be necessary to our study of the making of the Constitution, which is to follow.

The "critical period" of American history marks an epoch in the nation's political and industrial development. The treaty of peace made with Great Britain in 1783 severed formally and finally the ties which bound the States to the mother country. The independent and sovereign career of the United States may be dated legally from this time. Then, too, the era witnessed the beginning of great economic and social changes, which were destined to revolutionize American life. The industrial revolution, both in Great Britain and America, was soon to inaugurate the factory system. In colonial times the necessities were manufactured by the household, for the most part; but a remarkable series of inventions by Watt, Arkwright, Hargreaves, Crompton, and others caused the transfer of manufacturing from the home to the factory. Great improvements were made in the machinery for carding, spinning, and weaving. Manufacturing, particularly in the textile industries, received a remarkable impetus. Parliament undertook by statute to restrict the advantages of these inventions to Great Britain, but was not successful in so doing. As Weeden remarks



in his *Economic and Social History of New England*: "Wherever a people exists capable of adopting new discoveries, then the industrial atmosphere wafts the pollen of invention and new growth springs up." The new inventions found their way to our shores, and skilled artisans came from England to start the business of manufacturing in the New World. In 1785 Boston had an association of tradesmen and manufacturers, and Hamilton's famous report on the manufactures of America a few years later was a revelation to the men of the Old World. An attempt was made to manufacture cotton at Worcester, Massachusetts, as early as 1780. Other unsuccessful attempts were made in the next few years. Finally, in November, 1789, Samuel Slater, a man of great executive ability, arrived from London and established the first successful cotton mill in the United States. His mill was located at Pawtucket, Rhode Island, and was put in operation for the first time on December 20, 1790. The coming of Slater was an important event in the history of American industrial development.

If one would form an adequate conception of the boundaries and area of the new republic, he must avail himself of the work of the historical geographer. He must consult maps of the period of which we write. By so doing he will see that the territory actually occupied by the thirteen States in 1783 was the long, narrow strip of land extending from St. Croix River to Florida. The whole territory, however, as far west as Mississippi River was claimed on various grounds by different States. Virginia, New York, Massachusetts, North Carolina, South Carolina, Connecticut, and Georgia made claims to this western territory. The other six States had no such prospects for expansion, and the small States dreaded the effects that they feared might result from the occupation of the western territory by the larger States, and therefore contended that this territory should be ceded to the general government. Maryland was particularly desirous of having this done, and refused to sanction the Articles of Confederation until assured that its

wish would be granted. New York was the first State and Georgia the last, in 1802, to abandon claims to western territory. A large part of this cession was the so-called Northwest Territory lying between Ohio and Mississippi Rivers. After getting possession of this vast domain, Congress enacted the Ordinance of 1787 for its government. This ordinance has been spoken of as "the most important piece of general legislation of the Confederation epoch," and is certainly one of the most enlightened documents in our history.

Even the narrow strip of territory on the Atlantic coast was not densely populated. The first census, taken in 1790, showed a population in the thirteen States of three million nine hundred and twenty-nine thousand two hundred and fourteen people. The population of the earlier periods can only be estimated, but at the time of the treaty of peace with Great Britain (1783) it was probably about three million two hundred and fifty thousand. The northern, middle, and southern sections of the United States contained, respectively, about one-third of the total population. Virginia, Massachusetts, and Pennsylvania had the largest populations, and Georgia and Rhode Island the smallest. About four-fifths of the population consisted of free persons, the remaining one-fifth being African slaves.

The cost of the Revolutionary War amounted to about \$135,000,000. In addition to this sum, France spent about \$60,000,000 in behalf of the colonies. It is impossible to determine the sum of the national debt in 1783, because the accounts of the government were so loosely kept. It is, however, estimated to have been from \$30,000,000 to \$42,000,000. About \$8,000,000 was due to France and Holland, and the remainder to citizens of the United States. The annual interest on the debt was between \$2,000,000 and \$2,500,000. This was the financial burden which the States, in their aggregate, had to face in 1783.

There were other burdens, however, that the war laid upon the young republic. The industries of the country

were interrupted to a considerable extent. Men had been withdrawn from agriculture and manufacturing, and the commerce of the country was in an especially deplorable state. The number of men, however, withdrawn from the industries of the country for military purposes was not out of proportion to the population. The inhabitants of the colonies at the beginning of the war numbered about two million five hundred thousand. Of these, about four hundred and fifty thousand were adult males. The total number of men under arms at any one time during the Revolution probably never exceeded thirty thousand. This force was not excessive. The colonies were not greatly exhausted by the Revolution. As Washington said: "The country does not lack in resources, but we the means of drawing them forth." The demoralization incident to the war was its greatest and most serious cost.

General commerce was disorganized by the Revolution, and remained in this condition for the most part until reestablished under the Constitution. J. R. Soley seems rather too optimistic when he says: "In 1783 the American merchant marine was in a fairly healthy condition." In 1784 Great Britain sent to the United States \$18,500,000 worth of goods and took \$3,750,000 worth in return. These figures illustrate the one-sided and unprofitable nature of the commerce of the time, as far as the United States was concerned. Before the Revolution there was a profitable commerce with the West Indies. Lumber, corn, cattle, fish, and some manufactured goods were exchanged for coffee, cotton, indigo, and sugar. This commerce probably amounted to \$17,500,000 per year just before the Revolution, but was practically destroyed by the war.

During the period of the Confederation there was a rising commerce with China and the great East. To carry on this commerce with safety and success was no easy matter. The various nautical appliances now in use for directing and regulating the ship's course were either in a rude state of development or entirely unknown. The services of an

ocean cable were as yet denied. It was thus rarely possible to direct the ship from place to place by means of instructions sent after its sailing. The captain had his general written instructions and was compelled to rely upon his own ingenuity and judgment in case affairs took an unexpected turn. Even at a somewhat later time than that of the Confederation, a lad of nineteen took a ship from Calcutta to Boston, with no chart for his guidance save a small map of the world taken from one of the geographies of the day. Captain Cleveland, of the same period, made a voyage aided by two mates at a time when neither of the three had attained his majority. There are several heroic figures in the commercial history of this time whose careers are of interest. The most important of these was Elias Hasket Derby. Derby was a fearless navigator, with the true scientific spirit. He studied the art of shipbuilding in order to produce larger and stancher bottoms, and at the same time trained the boys of New England in the intricacies of seamanship. He gave them the benefit of his own large experience and inspired them with his own personality and with visions of a world of commerce. Captain Cleveland, himself an expert, remarked of Derby that his "enterprise and commercial sagacity were unequalled in his day, and perhaps have not been surpassed by any of his successors." Between 1785 and 1799 Derby managed one hundred and twenty-five voyages, and forty-five of these were to India or China. He had at least thirty-seven vessels in actual use; and in 1791 built the *Grand Turk*, of five hundred and sixty-four tons.

A large amount of the American commerce to the Orient went from the port of Salem. This port always presented a busy scene before the departure of a vessel for the East. For several months large numbers of vessels were employed in collecting the cargo for the Eastern trip. These vessels left the port of Salem laden with the tobacco of Virginia, the fish of New England, and various other agricultural and manufactured products. These products were carried

to Russia, Sweden, France, Spain, the West Indies, and elsewhere, and exchanged for wine, lead, rum, sugar, iron, hemp, duck, and other articles of commerce. These latter commodities were conveyed to Salem and there transferred to the ship bound for an Oriental port. Upon arriving at her destination in the East, the ship's cargo was disposed of and another obtained for the homeward voyage. The vessels returning from the Orient brought tea, coffee, muslins, silks, and various other products of the East. This Oriental commerce was extremely hazardous, but at the same time immensely profitable if fortune favored the enterprise. The ordinary profit on cloth from the East was about one hundred per cent. Profits on other commodities were sometimes even larger. One shipment of plain glass tumblers was sold at a profit of eleven hundred per cent.

West Indian commerce had revived with the return of peace. For a time, at least, great activity prevailed. West Indian ports were crowded with American ships. "From sixty to eighty vessels from America were reported at once in a single port." The commodities of this commerce were varied. One vessel "carried provisions, brick, and lumber, twenty horses, seventeen neat cattle, seventeen mules, twenty sheep, twenty swine, one hundred and fifty geese, and one hundred turkeys. The return cargo included rum, molasses, sugar, wine, pimento, pepper, tamarinds, sweetmeats, anise seed, coffee, cotton, tobacco, indigo, and salt."

American commerce as a whole, however, was not in a satisfactory state during the period of the Confederation, and even in 1789 its condition was not very flattering. It developed, however, very rapidly in the next few years. The new form of government had undoubtedly much to do with this. Some other conditions were favorable as well. "But the fact is," says J. R. Soley, "that the adoption of the Constitution, and still more the smoothness and certainty of its practical operation from the beginning, by raising up in men's minds a conviction that the panacea for political and commercial evils had at last been found, caused an

instantaneous reaction, which was further stimulated by the act of 1790 to establish the public credit. This is the real explanation of that amazing development of maritime industry in the United States which followed immediately upon the adoption of the new scheme of government."

The development of commerce naturally stimulated the shipbuilding industry. The demand, too, was for vessels of constantly increasing size. The trade with the Orient especially was calling for larger vessels. It was necessary that ships should carry, in addition to the cargo, a large crew and guns enough to repel the pirates who infested the seas. A vessel of three hundred tons was considered a "large ship." The *Grand Turk*, of five hundred and sixty-four tons, was the largest craft sailing from the port of Salem in 1791. New England was the most important centre of the shipbuilding industry at this time, but the builders of Philadelphia had also gained some reputation in this respect. The Philadelphia builders are said to have given their boats a finer finish, but the New England product had a reputation for staunchness and good sailing qualities. A combination of the two was considered an ideal ship. The saying: "Boston bottoms with Philadelphia sides" was meant to indicate the best possible construction.

The forests of the New World, and particularly those of New England, furnished an abundance of excellent material for shipbuilding. This had its effect, too, upon the cost of construction. In the Gloucester or Salem yards an oak vessel could be constructed for \$24 per ton; while in England, France, or Holland a similar boat would cost from \$50 to \$60 per ton.

The mast trade also flourished in connection with the shipbuilding industry. The tall pines of New England had long been marked for his majesty's ships and had served admirably for this purpose. Connecticut River was the scene of an important part of this industry. Henry Porter, of Northampton, cut large numbers of masts thirty-four to thirty-nine inches in diameter, as well as smaller spars, each

year along the upper course of the river and floated them down stream to be sent to Europe. The American mast figured prominently in many of the shipyards abroad. James Allen, in reminding England of this fact, says:

“E’en the tall mast, that bears your flag on high,  
Grew in our soil, and ripened in our sky.”

Although the sailing vessel was used exclusively in the water commerce of the time, it is interesting to note that experiments were being made which involved steam as a motive power. It is customary to give the credit for the invention of the steamboat to Robert Fulton, but, in justice, John Fitch and James Rumsey must at least be allowed to share the honor with him. Fitch was a Connecticut man with Yankee ingenuity, who possessed rare skill as a mechanic. In April, 1785, while in an obscure part of Pennsylvania, he began to speculate upon the possibility of using steam as a motive power on land and water. He afterward claimed that he knew nothing of the inventions of Watt at the time, and was much disappointed when his attention was called to them. He thought first of applying steam as a motive power to carriages, but later determined to take up the matter of propelling boats by that method. He built a rude boat with engine and side wheels and tried it, though without much success, on a small stream near his home. Another and more successful trial was made on Delaware River in 1786. The condenser was crude, the valves loose, and the piston leaky, and water oozed from the wooden cylinder heads, but these defects were remedied and the boat tried again. The paddles were also improved, and the boat, to the delight of its builder, succeeded in making seven miles an hour. In the following year a still greater triumph was awaiting the inventor. In August of 1787 he ran a steamer forty-five feet long up and down the Delaware in the presence of an immense throng of people, including some of the members of the Federal Convention. In 1790 he established a packet service on Delaware River, but it proved

a failure, and after further disheartening experience Fitch committed suicide in 1793.

At the same time that Fitch was struggling with the problem of steam navigation, James Rumsey was conducting a series of similar experiments upon Potomac River. On the 11th of December, 1787, he made his trial trip and ran his boat four miles in an hour against the current of the river. The mechanism of the boat was imperfect and even crude. Good results could hardly be expected. Some pipes that had been broken by water freezing within them had been clumsily repaired by wrappings of rags. The feasibility of the principle of steam navigation, however, had been demonstrated by both Fitch and Rumsey. The contest for the honor of priority between the two men was a bitter one. They assailed each other with great vigor by means of pamphlets. The public is not so much interested, however, in the question of priority as in the epoch-making character of the inventions.

The whale fishing industry was an important one in the United States and particularly in New England. The Revolution checked it, but after the peace there was a revival of the industry. Nantucket was the most important whaling port, but Barnstable, Falmouth, Martha's Vineyard, Cape Ann, New Bedford, and New London were also prominent points of outfitting. In 1775, Massachusetts granted a bounty to encourage the industry, and the result was that the products of the whale fisheries were vastly increased, but prices fell. In 1788, an increase in the number of lighthouses increased the demand for oil, and once more the business became a very profitable one. In 1789 one ship put into Nantucket with one thousand barrels of whale oil. This was considered an enormous cargo, and the captain thought that his record would remain unsurpassed. It is perhaps needless to say that it did not. Whaling was also carried on in the Pacific. The industry is one of the most interesting and sensational features of early American life. Whaling reached its greatest importance about the



middle of the nineteenth century, but even in its decline New England continued to be its centre.

The cod fisheries that were gathered about the famous banks of Newfoundland were also one of the important and growing industries of the time. "In 1786-90," says Weeden, in speaking of the industry in connection with the State of Massachusetts, "the annual fleet was five hundred and thirty-nine vessels of nineteen thousand one hundred and eighty-five tons, with three thousand two hundred and seventy-eight men." In 1790 and later, Congress granted bounties to stimulate the industry.

Manufacturing was, of course, in its infancy and confined for the most part to the household. Those great inventions which revolutionized the textile and other industries in England and America had not yet done their work. The manufactures of the United States, however, even at this time, were of some importance, and the epoch is one of transition to the factory system.

The manufacture of cotton cloth, of whose beginnings we have spoken, was flourishing. Cotton duck was produced in large quantities, as the revival of commerce and the fisheries created an active demand for this commodity.

Distilleries were also conducted with profit. In 1777, Rhode Island repealed its law which prohibited the use of grain for distillation, and Nathan Read, of Salem, improved the process then in vogue. A stimulus was thus given to the business.

Iron in bars and rods was imported from Russia, and Jacob Perkins, of Newburyport, invented a machine for making nails about 1790. Their manufacture increased from the demands of the times, and their production was a matter of great importance. Wood was to be had in abundance, for with the introduction of saw mills planks and boards were easily and, because of the abundance of timber, cheaply procurable; and with the use of nails comfortable houses were readily built. These dwellings were a great improvement upon log and treenail construction.

The textile industries, however, were the most important of the manufactures of the time. In 1783, Daniel Hinsdale was instrumental in establishing a woollen mill near Hartford. It was built by a company with a capital stock of \$6,250. The mill, when in full operation, produced annually about five thousand yards of cloth. Its product consisted of broadcloths, "coatings, cassimeres, serges, and everlastings." Washington was much interested in the enterprise and was one of its patrons. He purchased broadcloth for a suit for himself, and afterward pronounced the goods to be very satisfactory.

The improvements which were at this time made in the textile industries are interesting and important. The separating and arranging of the fibres of cotton or wool have always been important items in textile manufacture. This is done by means of cards or bands of leather containing innumerable fine wire teeth and revolving upon cylinders. The fixing of the teeth in the leather was a tedious and expensive process, as hundreds of them were set in a square inch of surface. In 1784, Chittenden, of New Haven, invented a machine with which he could make thirty-six thousand teeth per hour. Factories for the manufacture of cards were established on a comparatively large scale. One is said to have employed one thousand two hundred persons, mostly women and children, who were engaged in setting the teeth in the leather. In many instances this work was done outside of the factory and almost as a pastime, as knitting is done in our own day. It was quite customary for women of the time, in certain sections of Massachusetts, Rhode Island, and Connecticut, to take a supply of leather and teeth with them when they went to spend the afternoon with a neighbor, and deftly to insert the teeth while the gossip ran on. This laborious and expensive process was greatly improved upon in 1797 by Amos Whittemore. "One machine held and pierced the leather, drew the wire from a reel, cut and bent the looped tooth, inserted it and bent the knees, passing out a whole card

of any size or shape." This was truly an epoch-making invention and completely transformed the business of card manufacture in the United States. It was also introduced into England.

In discussing the social and economic conditions of the period, a word must be said in regard to slavery and the slave trade. At the close of the Revolution there was a marked anti-slavery sentiment in most of the States. This was particularly true of the New England States, where slave labor was not so profitable as in the South. In some of the Southern States there was a strong feeling against the institution of slavery, due largely to the Quaker element. In Virginia the great leaders of thought, Washington, Jefferson, Madison, Lee, Randolph, Henry, Mason, and others, were outspoken in its denunciation. At this time, however, slavery was not so essential to the economic life of Virginia as it appeared to be to that of the States further south. But a few years later a great change was effected. The invention of the cotton gin and the development of English manufacturing created a great demand for slave labor, and after the slave trade was abolished in 1808 it became profitable for Virginia to raise large numbers of slaves to be sold to the people further south. However, there was much antipathy to slavery among the States during the period of the Confederation. Delaware had provided for gradual emancipation in its Constitution of 1776. Virginia and Maryland removed all restraints upon emancipation and prohibited the introduction of additional slaves. North Carolina discouraged the slave trade by the imposition of a duty upon slaves. New Jersey took action similar to that of Virginia, and Pennsylvania in 1780 provided that no more slaves should be brought into the State and that the children of slaves born in the future should be free. New York took an advanced step and admitted the freedmen to the ballot. Slavery in New England died an early and a natural death, owing largely to economic causes. Slave labor was immensely profitable in the extensive agricultural enterprises

of the South, but could not be employed to advantage on the small farms or in the manufacturing establishments of New England. There was, too, among the Puritans a very strong opposition to the institution from the moral standpoint. The Massachusetts Supreme Court decided in 1783 that slavery could not exist under the Constitution of that State. The Constitution had been adopted in 1780, but its framers were not aware at the time that they were abolishing the institution of slavery. No tears were shed, however, at the discovery, and Massachusetts was thus the first State of the American Union to deprive slavery of a legal status. Other New England States displayed the same spirit toward slavery at this time. In 1784 the Rhode Island legislature declared that no person born after the 1st of March following should be a slave. Rhode Island also prohibited the slave trade in 1787. In New Hampshire there was gradual emancipation. Belknap said of the State in 1792: "Slavery is not prohibited by any express law . . . Those born since the constitution was made are free." Connecticut emancipated its slaves in 1784. In the two remaining States, South Carolina and Georgia, slavery seems to have been more firmly entrenched, and no action whatever was taken against it at this time. It might be well to note in this connection that the slave trade in New England did not cease when the various States of that section declared it abolished by statute. It was carried on illicitly for many years after it was theoretically abolished.

The trade relations of the time were grievously disturbed by the evils incident to a disordered and unstable currency. Even the unit of value was not uniform throughout. The pound and the dollar were both used in the transactions of the time, and these varied in the different States. The pound contained from nine hundred and sixty-six to one thousand five hundred and forty-seven grains of silver, according to the standard of the State of its use. It was subdivided into shillings and pence, and these subdivisions varied accordingly. The English coins, however, were for the most part

kept at home by the British government, and the Spanish dollar was chiefly used in financial transactions. This, too, varied. "The dollar meant 6s. in New England, 8s. in New York, 7s. 6d. in Pennsylvania." It is perhaps needless to remark that the paper money craze added to the uncertainty. The infatuation for the "rag money" was extraordinary. Congress said in a circular to the States: "Let it be remembered that paper money is the only kind of money which cannot 'make unto itself wings and fly away.' It remains with us, it will not forsake us, it is always ready and at hand for the purpose of commerce or taxes, and every industrious man can find it." In the light of subsequent events, this statement seems almost humorous.

There was no national system of coinage in the United States before 1785, and coins were not actually issued until eight years later. Coins from England, France, Spain, and Germany were in circulation in the meantime. These fluctuated in value, and were clipped and counterfeited to such an extent that business was utterly demoralized. Merchants accepted no coins without careful scrutiny, extending in many cases to testing the metal and proving the weight of the piece. This deplorable state of affairs continued until Alexander Hamilton placed the country upon a sound financial basis, and Gouverneur Morris, aided by suggestions from Jefferson, devised our present decimal currency.

It is important in a consideration of the subject of this chapter to turn from the industrial and commercial life of the people as a whole to the social life of the individuals and to see how they lived and moved. The establishment of a home in the New World was in some respects a comparatively simple matter. Land was cheap and log cabins were quickly and easily constructed by the skilled woodmen. In some of the more favored localities rude saw mills furnished a supply of lumber for building. Shingles were split from the straight-grained timber and provided excellent roofs. New settlers swarmed from the parent

hive. The sons of the family married, and built houses in the neighborhood of the family home. The people of the various localities came in time to be intimately connected. Each man owned the land upon which he worked, and it often occurred that there were three generations of the same family working side by side in the field.

The law of inheritance in this primitive community is interesting. In the Southern States and in New York, the old English rule of primogeniture prevailed, by which the eldest son inherited all the property of the father. In the remaining States, in case the father died intestate, the eldest son was entitled to a double share. Georgia, however, soon set a good example in equity by providing that all children should share alike, and in the twelve years succeeding 1784 all the other States adopted the same rule.

The Constitutions of the various States limited the suffrage by means of property qualifications. In New Hampshire and Pennsylvania, taxpayers were entitled to vote, but in the latter State the eldest son of a qualified voter could vote even though he paid no tax. In North Carolina, taxpayers were entitled to vote for members of the lower house of the legislature, but possession of a freehold of fifty acres was a necessary qualification for voting for senators. In South Carolina, it was necessary to own a freehold of fifty acres, or a town lot, or to pay a tax at least equivalent to the tax on fifty acres of land. In Maryland, the ownership of a freehold of fifty acres or £30 in money was essential. In Georgia, a man had to own property to the amount of £10 or be a mechanic. In Massachusetts, the ownership of an estate valued at £60 or an income of £3 was required. In New Jersey, it was necessary that the voter should possess £50 of "proclamation money." The New York Constitution required the ownership of a freehold estate worth £20 or the payment of a rental of forty shillings for voting for assemblymen; in order to vote for a senator or a governor, the possession of a freehold estate of the value of £100, above all debts, was essential. The

suffrage was thus very much restricted, but probably not too much so for the best interests of the people.

There were three parties or factions in the United States at the close of the Revolution. The largest and most vigorous of these was composed of the violent Whigs, who were intent upon driving the Loyalists from the country. The conservative Whigs were disposed to allow the Loyalists to remain, but would not permit them to share in the government. The third and smallest of the three parties was made up of the Tories, who had remained loyal to Great Britain during the Revolution. The feeling against this latter class was intense, and its bitterness was increased by the treaty of peace with England at the close of the war. In this treaty Congress agreed to recommend to the several States that the persecution of the Tories should cease and that they should be enabled to recover their estates, which had been confiscated during the war. This recommendation was received with great disfavor by the people, who were in no mood to do even scant justice to the unfortunate Loyalists. They hated the Loyalists and they wished to retain their estates. Even after the close of the war, severe laws were passed against these "tools and minions of Britain." Some of them had given aid and comfort to the enemy in the Revolution and others had even participated in Indian outrages. These facts were not easily forgotten. The views expressed at the time by the *Massachusetts Chronicle* were probably not extreme: "As Hannibal swore never to be at peace with the Romans, so let every Whig swear, by his abhorrence of slavery, by liberty and religion, by the shades of departed friends who have fallen in battle, by the ghosts of those of our brethren who have been destroyed on board of prison ships and in loathsome dungeons, never to be at peace with those fiends the refugees, whose thefts, murders, and treasons have filled the cup of woe." Editors, preachers, and pamphleteers exhausted the stores of their rhetoric in an attempt to crush the despised Loyalists. Hamilton and John Jay, however,







Thomas McKean. *From the painting in Independence Hall, Philadelphia.*

took a sane view of the matter and upheld the recommendation of Congress.

In New York severe laws were passed against the Tories, and in various States they were the objects of mob violence. Tar and feathers were used unsparingly, and in not a few outrages men were shot or hanged. They were reviled, ridiculed, and persecuted in every way imaginable. Their departure from the State was hailed with delight, contempt, and sallies of gruesome wit. "Independence fever" was said to be raging among them and to be "carrying off" large numbers each week. In other localities the persecution was hardly less severe. In one instance, the destruction of a vessel off the coast of New England which contained seven hundred Tories and from which almost no one escaped was considered a remarkably good joke.

For two or three years after the close of the war (1783) the persecution was at its worst. Then it began to abate, and reason began to predominate over prejudice. The exodus of Tories in 1784 and 1785 was remarkable. It is estimated that about one hundred thousand persons emigrated during these years. Some went to Florida, others to Canada, and still others to the Bermuda Islands. Some who went to Nova Scotia were received with undisguised contempt by the inhabitants and were finally compelled to move on. While at St. John they were ridiculed in newspaper articles and by means of handbills scattered in the public places. "Were you sent here to get land?" one poster asks. "Did you get any? How are you refugees off for cash: are you pretty flush? . . . Do you know how the Hivites and the Jebusites looked on the children of Israel when they came to take possession of the promised land?" The British Parliament, however, aided the unfortunate Loyalists in a financial way, and distributed among them in the course of a few years about \$16,000,000.

Transportation facilities have an important bearing upon the economic and social life of a people. During the period of the Confederation such facilities were not of the best.

The stage coach was the most important vehicle for land transportation. Travelling was difficult, tedious, and expensive. The stage coach was still a cumbersome and uncomfortable vehicle. It was a huge, boxlike affair without glass windows, doors, or steps, with side curtains of leather for use during inclement weather. There were usually four seats inside, accommodating twelve persons. These rude affairs, drawn by bony horses in harness of rope, lumbered clumsily along at the rate of forty miles a day in summer and about twenty-five in winter. The "day," however, began at three o'clock in the morning and ended at ten o'clock at night. In 1783, two of these coaches handled the passenger traffic between New York and Boston. Each passenger was allowed the free carriage of fourteen pounds of baggage, and upon due payment excess baggage to the weight of one hundred and fifty pounds might be taken. The stages also carried a part of the freight, though freighting wagons were in use for heavy packages. The trip of the stage coach occupied from a week to ten days. The danger to life and limb has been proved to have been greater than it is now in the days of railway travel. In many instances, the passengers were obliged to get out and push the coach in order to extricate it from the deep ruts of the road. Quagmires of black mud were frequent. Spots of treacherous quicksand were marked by stakes to warn the teamsters to avoid them, and in many instances it was necessary to invade the fields and take an entirely new course. The great rivers were not bridged, and ferries, operated by oars or rope, in summer and ice bridges in winter were depended upon for crossing. In the breaking-up time of the spring, and during the early frosts of the fall, passage was little less than perilous. The drivers were not above reproach, and brutality, negligence, and filching were all too common. The mails, as a consequence, were slow and irregular, and the rate of postage was exceedingly high.

Water travel was more easy, yet not without its difficulties. Packet sloops without regular schedules or much

speed made trips along the coast and on the navigable rivers. This method of travelling was usually tedious. Passengers often took small boats and went ashore to purchase supplies from the farmers in the vicinity, and were then able to regain their sloops without difficulty. In making the trip from New York to Brooklyn the flat-bottomed scow with its rude sails often turned back to accommodate passengers who came in sight after the gang plank had been raised. The trip, short as it was, was not without its dangers, as the passengers were often subjected to abuse by drunken boatmen.

Facilities for education were meagre. In the more populous and progressive localities a school was maintained for four months during the year, and reading, writing, and arithmetic were taught. Noah Webster's famous spelling book, Morse's *Geography*, and the *Youth's Preceptor* were coming into use. Harvard and Yale had been in operation for several decades, and there were a few academies which prepared boys for these institutions. The Bible was the reading book. This crude system of education, while it failed to provide a finished and symmetrical training, did turn out men of great independence and self-reliance. Opportunities for self-improvement at home were meagre, owing to the struggle for existence; but those which did present themselves were, for the most part, eagerly embraced.

The letters and memoirs of the period depict the simple and frugal life of the best people among the pioneers, and show the happy combination of mental culture with manual labor. Mary Moody Emerson, the aunt of Ralph Waldo Emerson, born in 1774, writes in her diary: "Rose before light every morn; visited from necessity once, and again for books; read Butler's *Analogy*; commented on the Scripture; read in a little book, Cicero's *Letters*,—a few; touched Shakspeare; washed, carded, cleaned house, and baked. To-day cannot recall an error, nor scarcely a sacrifice, but more fullness of content in the labors of a day never was felt. There is a secret pleasure in bending to circumstances while superior to them." The most rigid economy

was practised in almost every household. Mary Moody Emerson, above mentioned, writes: "I had ten dollars a year for clothes and charity, and I never remember to have been needy." The famous Nott family lived in Connecticut on a stony farm at this time. Their single cow provided milk for the family use and motive power for the plow as well. Mistress Nott did the housework and part of that in the fields. She was evidently a woman of great resource. At one time, when one of her sons was in need of a suit of clothes, she clipped the half-grown fleece from the back of a sheep and made a suit—all in a single week. A blanket of braided straw was humanely put upon the shivering sheep for the remainder of the winter. The father was an invalid, but the mother and her two sons walked to church every Sunday—four miles each way. The two boys are well known to the history of a later period as Samuel Nott, the famous preacher, and Eliphalet Nott, the president of Union College.

The libraries of the period were few and small. The books which they contained were quite characteristic of the people and reflected the ideas of the various localities. In the libraries of New England, for example, the novels of the time found no place. The popular books were such volumes as *The Lives of the Martyrs*, Watts's *Improvement of the Mind*, Lucas's *Happiness*, Rollin's *Ancient History*, and Bunyan's *Pilgrim's Progress*.

The preacher, especially in New England, was an important educational factor. In the time when books were scarce and newspapers and magazines almost unknown, the influence of the preacher was predominating. "He was the just man made perfect; the oracle of divine will; the sure guide to truth." The lives of the people were moulded largely by the teachings of the pulpit. The sermons of the pastor were long and his labors arduous, but his salary was not large and in many instances not promptly paid. It was, too, frequently, paid not in currency but in turnips, corn, beans, and bacon.

Much yet remained to be done before religious toleration and equality prevailed among the States. The stern face of New England Puritanism was still set against the Baptists, Quakers, and Roman Catholics. In Pennsylvania and Delaware alone did all Christian denominations stand on the same footing. In Rhode Island, Catholics were not allowed to vote prior to 1784. The granting of the franchise even at this time was a step in advance. Massachusetts, New Hampshire, and Connecticut were still Puritan and Congregational, and Dissenters were oppressed in various ways. In the remaining States the Church of England, or, as it came to be called, "the Protestant Episcopal Church," was received with more or less favor, and was numerically strong in Virginia and South Carolina, though the confiscation of Church lands by the former State was a severe blow to the organization. In some instances, unfortunately, the conduct of the clergy was not all that could be desired, though it was an improvement upon that of the period prior to the Revolution. But in the main the clergy were honest, God-fearing men, and to the Episcopal communion belonged all the best families. It contained the families of Washington, Jefferson, Madison, Mason, the Lees, Randolph, Henry, and others prominent in national affairs. In New England there was a striking contrast to the laxity of the South. The strictest laws prevailed upon the subject of heresy, and any act not absolutely necessary was construed as a desecration of the Sabbath. It was said in an old poem that God considered one day in seven sufficient as a relaxation from toil, but that the men of New England had improved upon the plan of the Almighty and made it a day and a half in seven.

Outside of Maryland the history of the Roman Catholics is a pathetic one. In New England especially, their lines were cast in unpleasant places. They were either not allowed to come into that locality or were subsequently driven out. In 1784 there were only six hundred Catholics in all New England. In the Southern States they fared

better. There were twenty-two thousand five hundred of them in the South, and twenty thousand in the State of Maryland alone. The four Middle States contained nine thousand four hundred, of whom seven thousand seven hundred were in Pennsylvania and Delaware.

The modern spirit of philanthropy had, of course, not yet sprung up. The scientific spirit, coupled with the humane, as applied to charities and corrections is a very recent development. The prisons and jails of the time were horrible almost beyond description. The ideas of John Howard and Elizabeth Fry had not yet been adopted in America. To add to the horrors of the prison pens, imprisonment for debt still prevailed, and thousands of weak and unfortunate persons were cast into jail because they could not pay their debts. These foul jails, the scenes of so many acts of cruelty and brutality, were scattered quite impartially among the various States; but one of the most horrible of all was the old Newgate Prison near Granby, Connecticut. It was an underground pen, located in an old copper mine, and a ladder in the shaft provided the only entrance. The horrors of the place have been graphically described by McMaster, whose words are quoted. "There in little pens of wood, from thirty to one hundred culprits were immured, their feet made fast to iron bars, and their necks chained to beams in the roof. The darkness was intense; the caves reeked with filth; vermin abounded; water trickled from the roof and oozed from the sides of the cavern; huge masses of earth were perpetually falling off. In the dampness and the filth the clothing of the prisoners grew mouldy and rotted away, and their limbs became stiff with rheumatism. The Newgate prison was perhaps the worst in the country, yet in every county were jails such as would now be thought unfit places of habitation for the vilest and most loathsome of beasts." In the prisons at Northampton, Worcester, and Philadelphia the condition of affairs was hardly better. In the jail of the latter place each prisoner was allowed a space six feet by two feet in

which to sleep. There was no separation of the sexes, and all grades of offenders were huddled together. The debtor and the murderer, the horse thief and those detained as witnesses, were compelled to mingle indiscriminately. The use of the branding iron, the stocks, the pillory, and the whipping post were among the common punishments.

The physician was an important member of the community. His medical education seems insignificant if we compare it with that of a modern practitioner, but he was usually an intelligent man and supplemented his reading by the results of his varied experience. In the country districts, the physician was expected to attend all who were in need of his services, and then collect his fee if he could. In many instances, he practised his profession at a loss, and he supplied, usually from his saddle bags, the drugs necessary for his patient. The fees were in keeping with the rude pioneer life. In Boston the fee was one shilling to one shilling and sixpence for a visit, but in the country it was much less. "Such as were in high life" were obliged to pay nearly double for the same service. Night visits were more, and "capital operations" were charged at £5.

Great quantities of loathsome drugs were taken by the sick and the well alike. The spring dosing, which still survives throughout the United States, was considered absolutely necessary to the continuation of health. Sulphur, senna, and rhubarb, with or without molasses, then, as now, were forced upon unwilling stomachs in the annual exercise that our forefathers gave to their livers and kidneys. Fever-stricken sufferers were stinted or denied water, though in towns along the New England coast clam juice, and in the South toast water, was sparingly administered. Bleeding was a panacea for all ills, and it mattered not whether the patient was plethoric or tuberculous. Mercury was a favorite drug, and its excessive use led to frequent cases of salivation.

The amusements of the time were comparatively few and primitive, and in too many instances coarse and vulgar. In



New England there was strong opposition to the theatre. The first theatre or "playhouse" in Boston was not established until 1794, because of this spirit of antagonism. In New York theatrical performances had preceded the Revolution, and after the peace one theatre was opened in 1785. Actors found encouragement in the South at an early date. The rendition of *The Beaux' Stratagem* in Salem, Massachusetts, in 1792, however, was made the occasion for the discussion of theatrical performances from the moral standpoint. Dancing was quite commonly indulged in. The stately minuet was the favorite for dignified occasions, while reels, jigs, and hornpipes did service in more plebeian festivities. Card parties, shooting matches, and tavern dinners occupied the attention of many. Rum, gin, and tobacco provided excitement for many a roistering crowd at a pioneer inn.

The costume of the period does not differ materially from that of colonial times. The ladies of fashion wore caps, high-heeled shoes, silk or satin bonnets, and brocade gowns with tight sleeves. Hoops were again in use, and a string of beads for the neck was indispensable. The woman who was "so poor that she hadn't a bead to her neck" was indeed to be pitied. During the excitement of the Revolution and before, the homely homespun prevailed, and leathern breeches were in common use for boys and workmen. The most rigid economy prevailed. It was a common sight to see men and boys walk in barefooted from the farm on Sundays and put on their shoes and stockings as they approached the town. Women, too, who wished to economize and to keep up a good appearance at the same time, were accustomed to wear their old shoes to the outskirts of the village; then casting them by the roadside to remain until their return, they would put on their "Sunday best" for the rest of the journey. The spirit of the times was against extravagance. Franklin in 1779 argued against the "gewgaws and superfluities" of the time. When his daughter wished him to bring her black pins and feathers from France, he declined, saying: "If you wear your cambric ruffles as

I do, and take care not to mend the holes, they will come in time to be lace; and feathers, my dear girl, may be had in America from every cock's tail."

Having obtained a glimpse of the political, economic, and social condition of the people of the United States during the period of the Confederation, we will now turn our attention to the efforts which were made to improve the form of government. In the closing years of the Confederation it became evident that something must be done. The Articles of Confederation were clearly defective in several particulars. American credit was dead; the paper money craze was rampant; the system of requisitions had utterly broken down; boundary disputes prevailed; American merchant vessels were not safe upon the seas; commerce was in a tangle; anarchy was threatened; and Congress was constantly becoming weaker. That body fled from Philadelphia to Princeton; from Princeton it went to Annapolis, thence to Trenton, and afterward to New York. It had lost the respect of the people and of itself. A rustic writer is made to express the wish that Congress might roll like a wheel from Dan to Beersheba and from Beersheba to Dan, and have no rest on either side of the river Jordan.

Although there were many valid reasons why the form of government should be strengthened, the deplorable condition of commerce was the immediate cause of the revision of the Articles. James Bowdoin, Governor of Massachusetts, was the first to move in the matter. In a message to the legislature of his State on May 31, 1785, he set forth the unsatisfactory condition of foreign trade and showed that the regulation of commerce should be in the hands of Congress. He accordingly recommended that there should be a meeting of delegates from all the States to take the matter under consideration. The suggestion was well received, and the General Court of Massachusetts expressed itself as being in favor of a convention of delegates from the various States to revise the Articles of Confederation. A copy of the resolutions was sent to Elbridge Gerry, Samuel Holten, and

Rufus King, the representatives of Massachusetts in Congress. They refused even to submit the matter to that body. Thus nothing came directly from the wise and patriotic suggestion of Governor Bowdoin, but the matter was later taken up in a different way. Shays's rebellion of 1786, and the widespread social discontent then prevalent throughout the country, brought home to the people the conviction that something was fundamentally wrong. It was the regulation of commerce, however, that was the immediate cause for the calling of the Constitutional Convention of 1787. Maryland and Virginia were mutually interested in the navigation of Chesapeake Bay and Potomac River and seemed to have conflicting interests. Commissioners from the two States met at Alexandria in the spring of 1785 to consider the matter. The commissioners deliberated and made a visit to the home of Washington at Mount Vernon, but accomplished nothing of importance aside from arranging for another conference to be held at Annapolis in the following year. It was evident to the delegates at Alexandria that two States could not solve the commercial problem which interested every State in the Union. This was particularly evident to Madison, and it was largely through his efforts that all the States were invited to send representatives to Annapolis in September, 1786. Madison and Hamilton hoped for some practical outcome from this meeting and labored zealously for its success.

When the Annapolis conference assembled on the 11th of September there were present only twelve delegates, representing five States,—the Middle States and Virginia,—and some of these delegates were limited by instructions in such a way as to impair their usefulness. John Dickinson was chosen chairman, and strove to carry out the purpose of the promoters of the convention. Again it became evident that nothing of direct importance could be accomplished. However, the delegates present did unite in a recommendation that all the States be invited to send delegates to another convention, to be held at Philadelphia on

May 14, 1787, to consider the form of government and to make such changes in it as might render it "adequate to the exigencies of the Union." Alexander Hamilton was chosen to draft an address to accompany the recommendation. This duty Hamilton accomplished with great skill. In speaking in his address of the inadequacy of the Articles of Confederation, he says that the commissioners at Annapolis refrain from an enumeration of their defects. "They are, however," he continues, "of a nature so serious, as in the view of your commissioners, to render the situation of the United States delicate and critical, calling for an exertion of the united virtue and wisdom of all of the members of the Confederacy. Under this impression, your commissioners with the most respectful deference beg leave to suggest their unanimous conviction, that it may effectually tend to advance the interests of the union, if the states by which they have been respectively delegated would concur themselves, and use their endeavors to procure the concurrence of the other states, in the appointment of commissioners to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the federal government *adequate to the exigencies of the union*, and to report such an act for that purpose to the United States in Congress assembled, as, when agreed to by them and afterwards confirmed by the legislature of every state, will effectually provide for the same." This address by Hamilton was worded with great force and skill. The situation was a delicate one, and great care was necessary in order that a spirit of antagonism to the project might not be aroused at the outset. The report was addressed only to the States represented at Annapolis, but copies of it were sent "from motives of respect" to Congress and to the executives of the other States. This recommendation was the only matter of importance connected with the Annapolis Convention of September 11, 1786, but this alone entitles

the meeting to a high place in the history of constitutional development in the United States.

The recommendation of the Annapolis conference was not met with open arms. Indeed, such a reception would be unprecedented. When the report reached Congress, the Massachusetts delegation, led by King, made war upon it, and it was not adopted. The Governor of New York said in effect that the Articles of Confederation were a satisfactory form of government or could easily be made so, and that the New York commissioners would have done well had they confined themselves to the business for which they were sent to Annapolis. Early in October, King appeared in the Massachusetts House of Representatives and declared that the recommendation of the Annapolis convention was entirely out of order. Such a step as was proposed, he said, should be taken, if at all, by Congress. His view prevailed, and the House refused to adopt the recommendation.

At this juncture, the State of Virginia, led by James Madison, came to the rescue. Upon motion by Madison, the Assembly unanimously adopted the recommendation of the Annapolis commissioners and chose a strong delegation to represent the State at Philadelphia. The Virginia legislators felt that their action was important, as their State was the first to act. They accordingly chose James Madison to draft the resolutions. This he did in a very effective way. Madison had pressed the cause of the convention with much persistence and with rare good sense, and now took occasion in the preamble of the resolutions to speak his mind in no uncertain way to the whole country. "Whereas the General Assembly of this Commonwealth," he said, "taking into view the actual situation of the Confederacy, as well as reflecting on the alarming representations made, from time to time, by the United States in Congress,—particularly in their act of the 15th day of February last,—can no longer doubt that the crisis is arrived at which the good people of America are to decide the solemn question, whether they will, by wise and magnanimous efforts, reap the just

fruits of that independence which they have so gloriously acquired, and of that Union which they have cemented with so much of their common blood; or whether, by giving way to unmanly jealousies and prejudices, or to partial and transitory interests, they will renounce the auspicious blessings prepared for them by the Revolution, and furnish to its enemies an eventual triumph over those by whose virtue and valor it has been accomplished: And whereas the same noble and extended policy, and the same fraternal and affectionate sentiments, which originally determined the citizens of this Commonwealth to unite with their brethren of the other States in establishing a Federal government, cannot but be felt with equal force now, as motives to lay aside every inferior consideration, and to concur in such farther concessions and provisions as may be necessary to secure the great objects for which that government was established, and to render the United States as happy in peace as they have been glorious in war."

The resolutions provided for the appointment of seven delegates to attend the Philadelphia convention. In the following month Washington, Patrick Henry, Edmund Randolph, John Blair, James Madison, George Mason, and George Wythe were chosen on joint ballot to constitute the delegation. These men had all been prominent in public life for a considerable time. There were two notable omissions,—Edmund Pendleton, who was not well at the time, and Richard Henry Lee, who had fallen from favor to a considerable degree.

This prompt and decisive action by Virginia was most opportune and effective. New Jersey followed its example on November 23d following. Pennsylvania, North Carolina, and Delaware did likewise shortly after. Even King, of Massachusetts, who was so strenuously opposed to the matter at the outset, wrote to Gerry early in 1787: "Although my sentiments are the same as to the legality of the measure, I think we ought not to oppose, but to coincide with this project. Events are hurrying us to a crisis. Prudent and

sagacious men should be ready to seize the most favorable circumstances to establish a more perfect and vigorous government."

The recommendation of the Annapolis commissioners was not adopted by Congress, and there was some opposition to the manner in which the call for a convention had originated. There was no little jealousy in the matter on the part of Congress. Many of the members of that body thought that the convention idea should originate with them. King, of Massachusetts, now made a very ingenious and timely motion, which was carried. He ignored entirely the action of the Annapolis commissioners and proposed to Congress that a convention be called by that body to meet in Philadelphia on the second Monday in May, 1787,—the same time and place proposed by the Annapolis commissioners. This was a sop to the self-esteem of Congress and an ingenious way out of the difficulty. As we have seen, a good start had already been made by the appointment of delegates from several of the States. On February 22, 1787, Massachusetts chose its delegates to the Convention. New York elected its delegation, of which Hamilton was a member, a few days later. Georgia and South Carolina chose their delegates in April; Connecticut and Maryland, in May; and New Hampshire, in June. Rhode Island alone refused to take any part in the Convention.

The people of the world were watching the trend of affairs in America with great interest. It was conjectured by some that a son of George III. of England would be called upon to occupy the throne in the United States, after the failure of republican government had been demonstrated and admitted. Others considered it more probable that a member of the Bourbon line in France would be the recipient of the American crown, while still others predicted the breaking up of the republic into three distinct confederacies. The 14th of May was awaited with great interest. It is not too much to say that the fate of the republic was at stake.

## CHAPTER III

### *THE PERSONNEL OF THE CONSTITUTIONAL CONVENTION OF 1787*

THE fifty-five men who gathered at Philadelphia in the summer of 1787 constituted one of the most remarkable bodies of men ever assembled in any country. They were well adapted to the work which they were to undertake. There were a few great constructive statesmen like Madison, Wilson, and Hamilton, who had a thorough knowledge of history and politics and were at the same time original, profound, and practical thinkers. These men took the initiative. They were ably supported by a class of delegates, of whom Washington was the most conspicuous example, who proposed very little but whose steady conservatism and powerful influence were indispensable. No less useful were a few compromisers or conciliators, like Ellsworth, Sherman, and Franklin, who by their tact on more than one occasion prevented the assembly from breaking up in confusion. Such men as Elbridge Gerry and Gouverneur Morris, the critics of the Convention, were also of importance; for although this class of men made few positive contributions to the work of the Convention, as correctives they were necessary. The majority of the delegates were of none of these classes. They were of mediocre abilities and attainments, but at the same time dignified and healthy-minded men, who usually voted on the right side. They did their part in bringing respectability and moderation to the Convention and in inducing the people to ratify the new form of government. In addition to these



well-disposed delegates there were a few—a very few—who were unfitted by nature for any part in such a work as this. Their narrow minds and rigid dispositions made it impossible for them to work with men who did not agree with them in every particular. The majority of these unwittingly conferred a great favor upon the Convention by withdrawing from its deliberations.

Sixty-two delegates, representing twelve States, were chosen, but only fifty-five of them actually attended the Convention. The remaining seven never put in an appearance, and no substitutes were chosen in their places. Two delegates—Patrick Henry, of Virginia, and Willie Jones, of North Carolina—declined to serve and their places were filled. Richard Caswell, of North Carolina, resigned and another was chosen in his stead. Benjamin Franklin at eighty-one was the Nestor of the Convention, and Jonathan Dayton at twenty-six was the youngest member. McMaster assigns this latter distinction to Nicholas Gilman, of New Hampshire, but apparently without good reason. Madison and Hamilton, two of the colossal constructive figures of the Convention, were thirty-six and thirty, respectively. Twenty-nine of the members were college men. Harvard, Yale, King's,—now Columbia,—William and Mary, Oxford, Glasgow, St. Andrews, and Edinburgh were represented. The remaining twenty-six did not have the advantages of a collegiate training, but they included in their number some of the most illustrious men in the Convention. Washington and Franklin were conspicuous examples of this latter class. There were, too, some very notable absentees. Jefferson and John Adams were abroad; Patrick Henry was biased, and refused to serve; Richard Henry Lee and Samuel Adams were not in sympathy with the movement and preferred, no doubt, to remain aloof. Then, too, Lee, at least, was no longer the popular idol that he had been in Revolutionary times. The majority of these men would have added little to the strength of the Convention; some of them would have weakened it. Even



Nathaniel Gorman.

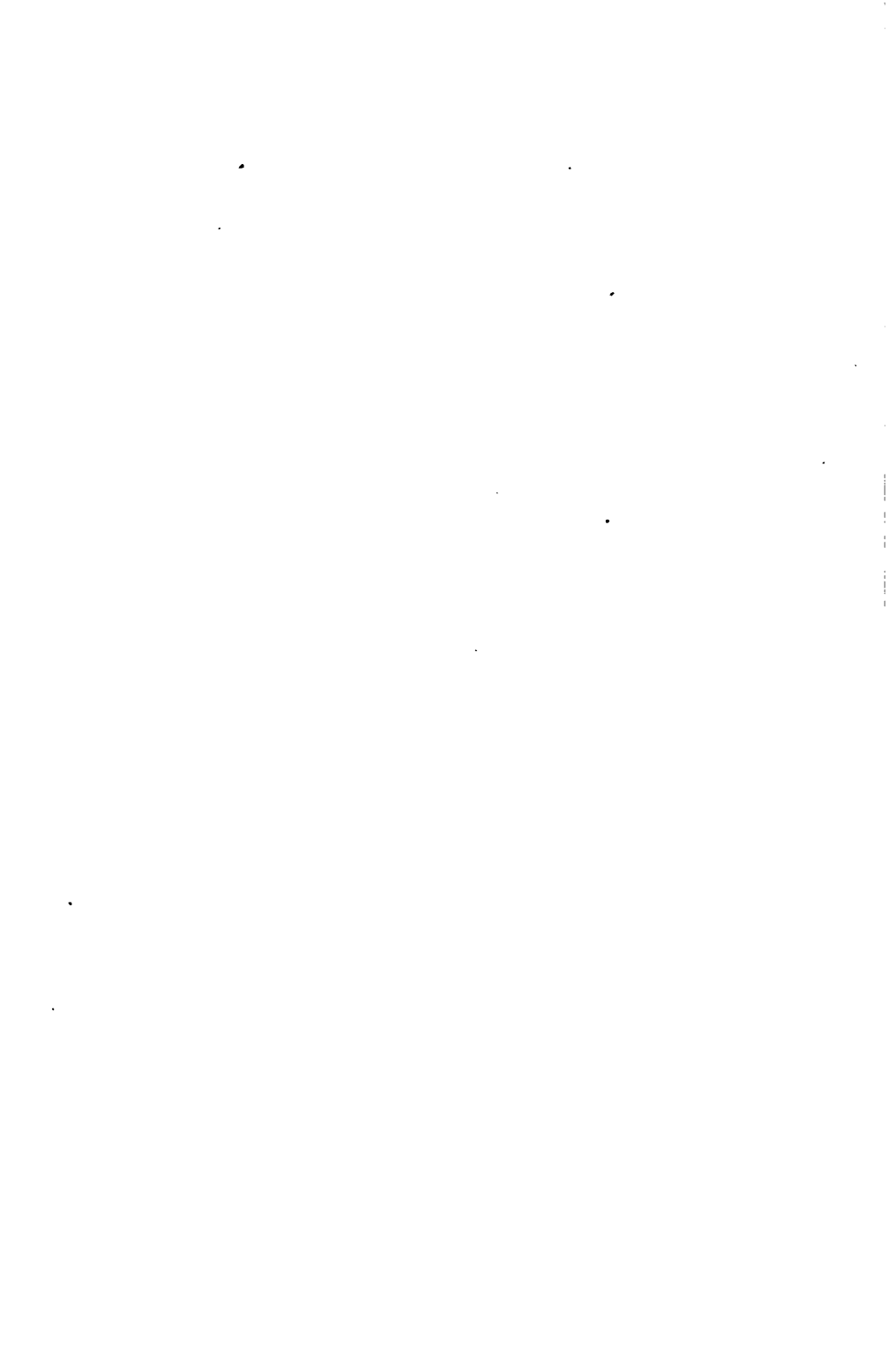
*By Albert Rosenthal.*



Rufus King.

*By Charles Willson Peale.*

*Both of which are now in Independence Hall, Philadelphia.*



Jefferson, with his acute mental powers and acknowledged genius for statecraft, would probably have been a dangerous element in such a gathering as this. The great strength of the Convention lay in its conservative clinging to Anglo-Saxon precedents, and Jefferson with his Latin leanings and love of theory might have succeeded in introducing some very dangerous innovations. John Adams, though a man of less ability, would have been more valuable than Jefferson. His greatest drawback would have been his irascible inflexibility, but this might have been tempered by the good judgment of such men as Washington. Patrick Henry, with his views of the rights and sovereignty of the States, would have been a dangerous member; and his remarkable persuasive powers and stubborn disposition would have retarded, if they did not thwart, the efforts of the makers of the Constitution.

Let us glance somewhat more in detail at the careers of the individuals who made up this illustrious body of men. The Convention contained many able men, but one only was indispensable. The greatest man in the Convention, as he is the greatest in American history, was George Washington. Virginia did a good service to the nation by placing him at the head of its delegation. His presence in the Convention inspired confidence in the masses of the people. His public services had surpassed those of any other man of his time. He had shown himself to be able, honest, and disinterested. He had given his services to his country during the Revolution without money and without price. For these reasons he had the respect and the confidence of the people to a greater extent than any other man. He was a man of aristocratic family, whose ancestors had long been inhabitants of Virginia. He was fifty-five years of age when the Convention met, and was even at that time a man of wide experience. He had been a surveyor in the western wilderness, and had gained renown in the valley of the Monongahela, when the conceit and stubbornness of General Braddock had invited the terrible onslaught of the French and Indians. He had served with



Such was the man called, upon motion by Robert Morris, of Pennsylvania, to preside over the Federal Convention. Dr. Franklin, the patriarch of the assembly, had been thought of by some in connection with this office, but the appointment of Washington proved to be eminently wise. He was not a debater, but as a moderator he could not have been improved upon under the circumstances. The statement made, by a contemporary, William Maclay, of Pennsylvania, at a later time characterizes his action throughout the entire Convention. "The president's amiable deportment, however, smooths and sweetens everything." The impressions of Count Moustier, the French minister to the United States, were similar to those of Senator Maclay. In a letter to his home government, written a few weeks after the first inauguration of Washington, he says: "The opinion of General Washington was of such weight that it alone contributed more than any other measure to cause the present constitution to be adopted. The extreme confidence in his patriotism, his integrity, and his intelligence, forms to-day its principal support . . . all is hushed in the presence of the trust of the people in the saviour of the country."

The praise of Washington has been so unqualified that the inevitable tendency has manifested itself in recent years to detract from his true glory. The pendulum has found the opposite extremity of the arc, but is now returning. Some have been disposed to look upon him as a man of mediocre talents. He is pictured as a man of somewhat substantial but by no means brilliant ability, and of only moderate attainments. It is true that he was not a profound scholar like Madison, neither was he a brilliant constructive writer and speaker like Hamilton. But he did a work in the Convention which neither of them could do. He was indispensable; they were not. He was not brilliant in any one particular respect, but was a man of symmetrical development and of splendid mental poise. For this reason he often seemed commonplace and was too often underestimated as a statesman.

After Washington, James Madison was the most useful man in the Constitutional Convention. He was not so brilliant as Hamilton or as Gouverneur Morris, but he was more effective than either in the construction of the Constitution. "Mediocrity which forbears will win more in politics than a genius which irritates." Madison had the power to forbear and was far above mediocrity. With the actual making of the Constitution he had more to do than any other man. His appellation, "The Father of the Constitution," was not undeserved.

Madison was a Virginian of good family and was only thirty-six years of age when the Convention assembled. He was, however, no stranger to public life even at that time. As a student in Princeton, he had been absorbed in the study of law, history, and politics; and immediately after his graduation from that institution, at the age of twenty-one, he began to participate actively in the affairs of his State. He was intensely interested in the patriot cause, but a frail constitution prevented him from serving in the field. However, at the age of twenty-three he was chosen a member of the Committee of Safety for his county. This was in 1774. In 1776 he was a delegate to the convention which framed the first Constitution for the State of Virginia. This he termed his "first entrance into public life." From this time until his retirement from the presidency, forty-one years later, Madison continued to be a prominent and useful public man. He first offered his services to his State. He was elected a member of the first Assembly which was held under the new Constitution of Virginia. He was a candidate for a second term, but was defeated because he declined to resort to the electioneering methods then in vogue in Virginia. He thought the times seemed "to favor a more chaste mode of conducting elections," but he was mistaken. "He solicited no votes; nobody got drunk at his expense; and he lost the election." The Assembly, however, had more good sense and discrimination than the people, and the members of that body promptly elected him a member

of the Governor's Council. Two years later, in 1780, at the age of twenty-nine, he was elected a delegate from Virginia to the Continental Congress. Here he served his State and the nation with great distinction, although his pecuniary compensation was small and dilatory. In some instances actual living expenses were denied to him and his colleagues. This, however, did not lessen his enthusiasm for the public service. "I cannot," he wrote to Randolph, "in any way make you more sensible of the importance of your kind attention to pecuniary remittances for me, than by informing you that I have for some time past been a pensioner on the favor of Haym Salomon, a Jew broker." It should be noted, however, that Madison's treatment at the hands of Salomon was very unusual. "The kindness of our little friend in Front Street near the coffee-house," writes Madison, in another letter to Randolph, "is a fund which will preserve me from extremities; but I never resort to it without great mortification, as he obstinately rejects all recompense. The price of money is so usurious, that he thinks it ought to be extorted from none but those who aim at profitable speculations. To a necessitous Delegate he gratuitously spares a supply out of his private stock."

Madison's prominent yet modest part in the debates in Congress is noticeable at this time. He had prepared himself for public life, while in college and later, by a very careful study of law, politics, and history, and now had no rivals in Congress in this respect with the exception of Hamilton and possibly of Ellsworth. Not being eligible, according to the laws of Virginia, to reelection to Congress in 1784, he was chosen to represent his county in the Virginia Assembly. Such a step would now be looked upon as a backward move, but was not so considered at that time. The State legislatures were, as a rule, very effective and dignified bodies; while the importance of Congress, never great under the Articles of Confederation, was declining. Madison's position in the Virginia legislature was both



influential and conspicuous. He was largely responsible for the stand which his State took in favor of a convention for the revision of the form of government. This was his greatest service in the Virginia Assembly. In the early part of 1787 we find him again in Congress.

During his whole life he was an earnest student of history and the science of government. His letters and papers show that he was familiar with political science, from Plato and Aristotle to Locke and Montesquieu. He knew the history of federal government in ancient Greece, in mediæval Italy, in Switzerland, and in Holland. He saw the defects of those systems and strove to guard against similar defects in the new Constitution. He appreciated the inadequacy of the Articles of Confederation as keenly as any man of his time, and labored just as intelligently as any of his contemporaries, and more incessantly and adroitly than anyone else, to bring about a revision of the form of government. He was always a scholar, a deep and constructive thinker. He was never a great popular idol, like Henry Clay or Andrew Jackson, but his work was of the most substantial and enduring character. His place among the founders of the nation is deservedly high. He wears well.

The estimate of Jefferson, with whom Madison had been very intimately associated for many years, is interesting in this connection. Writing in his *Autobiography* in 1821, he says of Madison: "Never wandering from his subject into vain declamation, but pursuing it closely, in language pure, classical, and copious, soothing always the feelings of his adversaries by civilities and softness of expression, he rose to the eminent station which he held in the great national Convention of 1787; and in that of Virginia which followed he sustained the new Constitution in all its parts, bearing off the palm against the logic of George Mason and the fervid declamation of Mr. Henry. With these consummate powers were united a pure and spotless virtue, which no calumny has ever attempted to sully. Of the powers and polish of his pen, . . . I need say nothing."

His personal appearance was not imposing. His stature was in striking contrast with that of Washington. He was small, somewhat frail, and devoid of that physical force and personal magnetism which count so much for success in public assemblies. He was retiring in disposition, mild-mannered and deferential toward his opponents; yet he was very much in earnest and a most persistent advocate of that which seemed to him to be right. He was also, though frail, a man of untiring industry. It may or may not be true, as has often been said of him, that while a student at Princeton he devoted only three hours out of the twenty-four to sleep in an effort to do the work of the last two years of the course in one, but it is certainly true that no man ever prepared himself for public life with more care or later retained a greater degree of unflagging industry. He was national and not provincial in his ideas. Throughout the entire Convention he kept steadily in view the importance of the Union, and in his *Advice to my Country*, written at the close of his career, he said: "The advice nearest to my heart and deepest in my convictions is, that the Union of the States be cherished and perpetuated. Let the open enemy to it be regarded as a Pandora with her box opened, and the disguised one as the serpent creeping with his deadly wiles into Paradise." Although Madison was not so great as an executive as he was in some other respects, we can recognize in him the characteristics of a profound, broad-minded, and honest man; and we now see him in the Constitutional Convention "at the noblest and most useful moment of his life."

The most brilliant man in the entire Convention was Alexander Hamilton. His acute mental penetration and his broad grasp of public affairs are little less than marvellous. His precocity is almost incredible. In this respect his career has no parallel in history unless it be that of the younger Pitt in England. His father was Scotch and his mother French, and he was born a British subject on the island of Nevis in the West Indies. He seemed to combine

the shrewdness and good judgment of the Scot with the alertness and brilliancy of the Latin. He was but thirty years of age when the Convention assembled, but he had been prominent in public affairs for at least thirteen years. He was thrown upon his own resources at an early time in life and his youthful development was remarkable. His mother died while he was still young, and his father, unsuccessful in mercantile affairs, intrusted the care and tutelage of his son to relatives. The young Hamilton obtained the rudiments of an education in his West Indian home and became a clerk in a counting room at the age of twelve. This work was not to his liking, however, and he came to America in October of 1772. He applied himself to study with remarkable zeal and ability and in a few months was ready for college. He entered King's College, now Columbia University, in New York City, and there threw himself into his work with wonderful vigor. He also took a great interest in public affairs and soon became impressed with the wrongs of the colonies. His entrance into public life was dramatic in the extreme. A great patriotic meeting was held in New York on July 6, 1774, for the purpose of influencing public opinion in that locality. Hamilton caught the spirit of the occasion and ascended the platform to speak his sentiments. This he did in an eloquent and impressive way, although he was but a mere boy at the time.

From this moment until the day of his unfortunate and untimely death at the hands of Aaron Burr, Alexander Hamilton was a conspicuous figure in American public life. At the beginning of the Revolution he was an artillery commander, and later was associated with Washington in a confidential way. After the battle of Yorktown was fought he applied himself assiduously to the study of law, and in November, 1782, we find him holding a seat in Congress. He was the ablest man in this now degenerate body and soon made a powerful impression. He was especially interested in financial matters, which to others seemed almost hopeless at this time; and he bent his energies to

the utmost in an endeavor to better the situation. He accomplished nothing, however, aside from enhancing his own reputation, and retired to private life at the close of his term. He again devoted himself to the practice of his profession, but continued to take an absorbing interest in national affairs. As a lawyer, an orator, and a writer, he exerted an influence both in his State and in the nation. He recognized the inadequacy of the Articles of Confederation and worked with Washington and Madison to bring about a convention to revise the form of government. His influence in the Convention was not commensurate, however, with his surpassing talents, because, as we shall subsequently see, his ideas in regard to the kind of government which should be established did not find favor among the people or their leaders. He would have a government of extreme centralization, but the Convention did not adopt his views. However, he signed the Constitution and did heroic service with pen and voice in bringing about its ratification. The ratification contest in New York, in which Hamilton was the central figure, is one of the most interesting and even dramatic scenes in all our annals.

The "little lion," as his admirers loved to call him, was slight in stature and much below the average height; nevertheless, his personal appearance was impressive. He was not eloquent in the sense that Patrick Henry was eloquent, but he was masterful and most impressive as a public speaker. His fine personality, his intellectual and clean-cut features, and, above all, his logical reasoning, made him the master of every audience that he faced. Few men of his time could compare with him in this latter quality. John Adams, who was the "colossus of the debate" when the Declaration of Independence was adopted; Fisher Ames, who saved the Jay treaty by a most eloquent and pathetic speech; and Patrick Henry, whose fervid and fiery eloquence aroused the Virginia House of Burgesses to a fever heat, are the only men of the time who deserve to be mentioned with Alexander Hamilton in this respect. Even in these cases

direct comparison is impossible, as each man had his distinct individuality. Senator Henry Cabot Lodge has presented to us a graphic description of Hamilton's personal appearance and style of oratory. "Inches of stature and of girth were lacking," he says, "but he was none the less full of dignity. In this, of course, his looks helped him. His head was finely shaped, symmetrical, and massive. His eyes were dark, deep set, and full of light and fire. He had a long, rather sharp nose, a well-shaped, close-set mouth, and a strong, firm jaw. The characteristics of the spare, clean-cut features are penetration and force. There is a piercing look about the face even in repose; and when Hamilton was moved, a fire came into his eyes which we are told had a marvellous effect. But it was the soul which shone through his eyes, and animated his mobile countenance, that made him so effective in speech. As men listened to him, they felt profoundly the mastery of the strong nature, the imperious will, and the passionate energy which gave such force to his pathos, to his invective, and to the even flow of clear, telling argument."

Judge Spencer, who knew him well, pronounced Hamilton "the greatest man this country ever produced. . . . I saw him," he continues, "at the bar and at home. He argued cases before me while I sat as judge on the bench. Webster has done the same. In power of reasoning Hamilton was the equal of Webster; and more than this can be said of no man. In creative power Hamilton was infinitely Webster's superior." The careful student of the career of Hamilton will probably agree with John Marshall when he places the brilliant "West Indian" next to Washington in the galaxy of American heroes.

James Wilson, of Pennsylvania, was one of the stalwart members of the Convention and should be mentioned among the leaders. He was born in Scotland in 1742, and was therefore forty-five years of age when he appeared in the Constitutional Convention. He had been well educated in his native land, and was especially proficient in the classics.

The history and philosophy of Greece and Rome attracted him and he was a thorough scholar in these fields. When twenty-one years of age he came to New York, and three years later to Philadelphia. He studied law, became an eminent jurist, and at one time sat upon the supreme bench of the United States. He served his State in Congress for six years between 1775 and 1787, and took a prominent part in the discussion of the important matters then before that body. He was an ardent advocate of independence and a signer of the famous Declaration. He was a thorough American and saw clearly the defects of the Articles of Confederation. He had pronounced views in regard to the "sovereignty" of the States. He declared in Congress in March, 1783, that "he had always considered this country, with respect to the war, as forming one community;" and in June, 1787, he further declared in the Constitutional Convention that "he could not admit the doctrine that, when the colonies became independent of Great Britain, they became independent also from each other. He read the Declaration of Independence, observing thereon, that the *United Colonies* were declared to be free and independent States, and inferring, that they were independent, not *individually* but *unitedly*." It was urged at the time that since the States were sovereign bodies they and not the people must be represented in the new form of government. Wilson contended for the opposite. The point was a vital one and constituted one of the fundamental defects in the Articles of Confederation. He took the same ground when the Constitution was before the Pennsylvania convention for ratification. His speech on that occasion is said to have been one of "singular power" as well as "one of the most comprehensive and luminous commentaries on the Constitution that have come down to us from that period."

He was skilled in finance and constitutional law, and was a very effective debater. He was also an impressive orator. A perusal of the debates of the Federal Convention will convince the reader that James Wilson was one of the

ablest and most vigorous members of that body. Unlike Madison, he was a large man of powerful physique and forceful personality. McMaster says of him: "Of the fifty-five delegates he was undoubtedly the best prepared, by deep and systematic study of the history and science of government, for the work that lay before him." Although we cannot agree in this, for the description is applicable only to Madison, James Wilson was one of the stalwart figures in this formative period of American history.

The oldest and one of the best-known members of the Convention was Benjamin Franklin, of Pennsylvania. Franklin was of English stock and was born in Boston in 1706. He was eighty-one years of age when the Convention assembled, and was well and favorably known in the literary, social, political, and scientific circles of both the Old World and the New. His educational advantages were very meagre, indeed. At the age of eight he went to the Boston Grammar School, but stayed there less than a year because the expense was more than his family could bear. At a later time, he attended a private school for a year, and "thus his school-days were ended forever." He was, therefore, a "self-made" man; and, although he ridiculed the man who "was so learned, that he could name a horse in nine languages; so ignorant, that he bought a cow to ride on," he did so more in humor than in malice. He was never in his sincere moments a scoffer at education. Neither was he a religious man in the ordinary acceptance of that term, yet he encouraged religious institutions. At one time he was elected a member of the board of trustees of an academy which subsequently developed into the University of Pennsylvania, because in a quarrel of the religious denominations he was turned to as a compromise candidate, being spoken of as "*merely an honest man*, and of no sect at all."

Franklin's was one of the most kindly and lovable of dispositions. If Washington "needed to be humanized," Franklin was the most human of men. He was cosmopolitan in character and appealed to men of all nationalities.

He had not that untiring industry which characterized Madison,—in fact, John Adams, who, by the way, never appreciated him, called him “indolent,”—but in the course of his long life he accomplished a great deal for the good of humanity. He had not the constructive genius either of Hamilton or Madison, but he brought to the Convention the prestige of a great name and a rare fund of quaint and homely philosophy. His humor, tact, and common sense were effective at the critical junctures of the proceedings. The members of the Convention admired him for what he was and respected him for what he had done. He was the oldest man in American public life, and his span of years included the activities of the Revolution, those of the French and Indian War, and those of earlier colonial times as well. He was active in American affairs long years before some of the members of the Convention were born into the world. He had signed the Declaration of Independence, and had drafted, a generation ago, a plan of union for the thirteen colonies. He had represented some of the colonies as their agent in England before the Revolution, and was sent as a commissioner to France in 1776. He had served as a delegate from Pennsylvania to the Second Continental Congress, and was president of the Supreme Executive Council of that commonwealth at the time of the Convention. In the meantime, his political writings and scientific researches had added to his renown the world over. “It may be doubted,” says John T. Morse, Jr., “whether any one man ever had so many, such constant, and such firm friends as in three different nations formed about him a veritable host.”

Although Franklin had passed fourscore years and the greater part of his work was already done, he was nevertheless a most useful member of the Convention. His physical strength had failed to such an extent that many of his speeches were committed to writing and then read by his colleague, James Wilson. Some of his political ideas, as we shall soon see, were entirely mistaken ones, but his rare tact and



wonderful good sense and kindly humor probably saved the Convention on more than one occasion. His very presence in the Constitutional Convention gave the American people and the world a feeling of confidence in that body. George Ticknor Curtis well says: "His great age, his venerable and benignant aspect, his wide reputation, his acute and sagacious philosophy—which was always the embodiment of good sense—would have given him a controlling weight in a much more turbulent and a far less intelligent assembly." When the opposing factions of the Convention confronted each other and shook their fists, he quaintly reminded them that they were there to consult and not to contend.

Washington, Hamilton, Madison, Wilson, and Franklin were the five men of greatest ability and poise in the Convention. There were, however, several other members, whose services, though not indispensable, were yet of great value. Such a man was Gouverneur Morris. Morris was both prominent and useful in the debates of the Convention, but he is remembered in connection with the Constitution chiefly because he is responsible for the final literary form of that document. He was a member of the committee of revision with Johnson, Hamilton, Madison, and King, and the work fell entirely upon him. "The finish given to the style and arrangement of the Constitution," said Madison in a letter to Jared Sparks, "fairly belongs to the pen of Mr. Morris. A better choice could not have been made, as the performance of the task proved. The talents and taste of the author were stamped on the face of it." If Gouverneur Morris had no other claim than this to the gratitude of the American people, he should stand high in their affections because of the service which he rendered in giving to the fundamental law that conciseness and precision of expression which have rendered the interpretation of the Constitution a comparatively simple matter.

Gouverneur Morris was born in the State of New York in 1752 and was graduated from King's College in 1768.

He was a member of an aristocratic family of illustrious lineage and of liberty-loving tendencies. His great grandfather had marched under the banner of Cromwell, and his mother was descended from the Gouverneur family of French Huguenots. He had a strain of the Latin vivacity and was keen and able, but too erratic to inspire confidence such as Washington and Madison inspired. He was independent, fearless, honest, aggressive, and even at times brilliant. Yet with all of this there was in him that which Roosevelt has well termed a "whimsical streak." This detracted from his effectiveness.

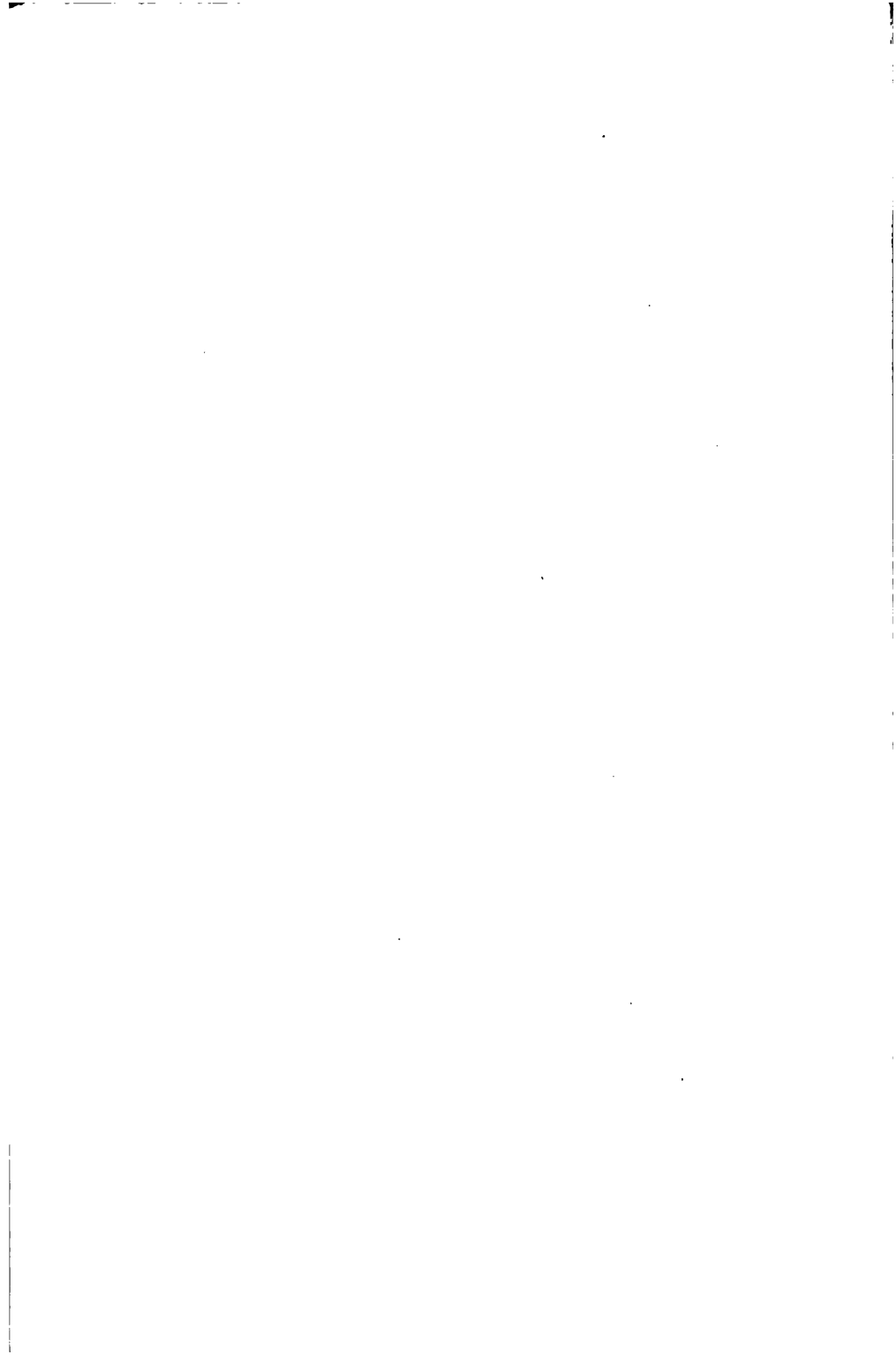
Although Morris was but thirty-five years of age when the Convention met, he had been in public life for a considerable time. He was a lawyer and had served with distinction as a member of the Provincial Congress of New York. He was an ardent advocate of independence and had taken a prominent part in the convention which framed the first constitution for his State. In 1778, he was sent to Congress as a delegate. Here he soon showed himself a man of ability, energy, and executive capacity. He had, too, the courage of his convictions. If this were not true, he would never have joined the Revolutionary party. He was the only member of his family who had espoused the patriot cause. The rest were Loyalists, and the separation which his choice of party made between him and his mother at the old home was truly pathetic. After a service of two years he retired from Congress, went to Philadelphia, and resumed his law practice. However, he was soon after appointed assistant to Robert Morris, the famous financial agent of the Revolution, and while serving in this capacity suggested the decimal notation which was later made the basis of our coinage. He was then sent by Pennsylvania as a delegate to the Constitutional Convention, and his impressive eloquence is prominent on almost every page of the debates of that body.

Unlike Madison, he was by no means retiring in disposition. His self-confidence never forsook him. He himself is

said to have remarked that he never experienced the sensation of fear or embarrassment. He would, however, Madison tells us, change his opinions when convinced of their fallacy. He was broadly national in his views and deplored the prevalence of the idea of State "sovereignty." The undue exaltation of the State was in his mind a matter of serious concern. "We cannot annihilate," he said, in his eloquent way, "but we may perhaps take out the teeth of the serpents." He was also opposed to slavery, and denounced it as a "nefarious institution, the curse of Heaven on all the States in which it prevails." His influence in the Convention was lessened considerably by his undemocratic views. In framing the Constitution he would allow the president and the senators to hold office for life or during good behavior, and in other ways would inject an aristocratic element. He had the good sense, however, to submit to the will of the majority and to see that the Constitution, though distasteful to him in many respects, was preferable to a reign of anarchy.

Edmund Randolph, a member of the Virginia delegation, is best remembered in connection with the "Randolph" or "Virginia Plan." During the early days of the Convention Randolph presented an outline plan of government which subsequently became the basis of our present Constitution. He was Governor of Virginia at the time and was chosen by his colleagues, probably because of his official position, to present the draft. Under ordinary circumstances this duty would have fallen to the lot of Madison. It should be noted in passing that the Virginia Plan was so changed in the course of the Convention that Randolph refused to sign the finished Constitution.

Randolph had seen service in the Revolution, had served his State and the nation in Congress, and had been elected Governor of Virginia in 1786. It was largely through his tact that Washington was induced to forsake the retirement of Mount Vernon to participate in the Federal Convention. Although Randolph did not sign the Constitution, he





John Rutledge.

*After a painting by J. Trumbull, owned by the Misses  
Rutledge, Charleston, South Carolina.*



Charles Cotesworth Pinckney.

*After a painting by Gilbert Stuart, owned by Captain Charles  
C. Pinckney, Runnymede, South Carolina*

strove zealously in the Virginia Convention to bring about its ratification. "I have labored," said he, "for the continuance of the Union,—the rock of our salvation. I believe, as surely as that there is a God, that our safety, our political happiness and existence, depend on the union of the States; and that without this union, the people of this and the other States will undergo the unspeakable calamities which discord, faction, turbulence, war, and bloodshed have produced in other countries."

Rufus King, a Massachusetts delegate and a Harvard man, was thirty-two years of age when sent to the Convention. He too had fought in the Revolution and had served with distinction in the legislature of his State. From 1784 to 1787 he served in Congress as a representative from Massachusetts. During these years he showed himself in several instances to be rather narrow-minded in regard to a revision of the form of government. Instead of seconding the efforts of Madison, Washington, and Hamilton in this respect, he attempted to thwart them and was temporarily successful. However, he atoned for these obstructionist efforts, to a certain extent, by becoming intimately connected with the making of the Constitution. He was a member of the Congress which called the Philadelphia Convention, and he was a useful member of that Convention as well as of the Massachusetts convention which ratified the Constitution. After the Philadelphia Convention had been called by Congress, King was eager to remedy the defects in the Articles of Confederation. He had the national idea and was in favor of depriving the States of much of their power. He was an important factor in the Convention, and it was he who formulated that part of the Constitution which prohibits the States from impairing the obligation of contracts.

General Charles Cotesworth Pinckney, of South Carolina, must be looked upon as one of the leaders of the Convention. He was forty-one years old when the Convention met, and had been educated in England and France. He was an able lawyer and had been a gallant soldier in the

Revolution. He was a man of education, energy, and good judgment, and enjoyed the entire confidence of Washington. His influence in the Convention was no doubt lessened by the fact that as a representative of a small State, and a Southern State as well, he was opposed to a strong central government and advocated slavery. At the opening of the Convention he favored a revision only of the Articles of Confederation, but later made some wise concessions to the national party. He also defended the institution of slavery, but was wise and patriotic enough to consent to the abolition of the slave trade in 1808.

Charles Pinckney, also of South Carolina, was considerably younger than his colleague, Charles Cotesworth Pinckney. In fact, he was one of the youngest members of the Convention, having been born in 1758. He had served in Congress from 1784 to 1787, but his prominence in public life belongs more particularly to the period following the adoption of the Constitution.

Roger Sherman, of Connecticut, was one of the oldest and most substantial members of the Convention. He was sixty-six years of age in 1787, and brought to the Convention a wide experience and sound judgment. He was a signer of the Declaration of Independence and had served in Congress. He began life as a shoemaker and developed into a mathematician, an astronomer, and a lawyer. He was a staunch defender of the Constitution when it was up for ratification, and apparently possessed the confidence of the people. Jefferson remarked of him that he "never said a foolish thing in his life."

John Dickinson, of Delaware, was a man well known in public life before the Convention met. He was an able and conscientious man, but too conservative for the times. He had voted against the resolutions for independence and had refused to sign the Declaration. The unpopularity caused by these acts vanished to a great extent, and he continued to be prominent in public life. He is supposed to have been the principal author of the Articles of Confederation, and many

able state papers came from his pen. His letters of *Fabius* aided in bringing about the ratification of the Constitution.

Robert Morris, of Pennsylvania, is one of the best-known and most useful men in American history. His fame, however, does not rest upon his work in the Constitutional Convention. He earned his great reputation as the financier of the Revolution. His services in this respect now seem to have been indispensable. No man ever made more heroic or unselfish efforts to aid a fellow man in a great undertaking than he did to aid Washington. The history of this effort in the days of the Revolution is a history of fortitude and of unflagging industry. He resorted to every honorable method which human ingenuity could devise to obtain money to enable Washington to carry on the war. This was his great work. He did not attempt to take a leading part in the work of the Convention. He was in entire sympathy with Gouverneur Morris, of the same State, although not related to him in any way, and allowed the latter to represent him on the floor of the Convention. This, possibly, may account for the large number of speeches which Gouverneur Morris made in the course of the Convention. A writer in the *Historical Magazine* with a statistical bent finds that he addressed the Convention one hundred and seventy-three times, the largest number of speeches accorded to any member. James Wilson comes next with one hundred and sixty-eight speeches; Madison made one hundred and sixty-one; Sherman, one hundred and thirty-eight; Mason, one hundred and thirty-six; and Gerry, one hundred and nineteen.

George Mason, of Virginia, was an able and patriotic man, although he refused to sign the Constitution when the work of the Convention was done, and aided Patrick Henry in opposing its ratification by the Virginia convention. He was an ardent opponent of slavery throughout the entire Federal Convention.

Elbridge Gerry, of Massachusetts, also refused to sign the Constitution. He was a Harvard man and a signer



of the Declaration of Independence, but is most widely known because as Governor of Massachusetts he aided in that juggling of election districts which gave rise to the term "Gerrymandering."

There were several other men who did not take prominent parts in the Convention, but who had shown ability in other lines of public service. William Patterson, of New Jersey, is best known perhaps because of his introduction and advocacy of the so-called "New Jersey" or "Patterson Plan." John Langdon, of New Hampshire, had displayed the greatest of loyalty and patriotism during the Revolution. He gave his money, plate, and seventy hogsheads of tobacco for the support of a New Hampshire regiment. He also furnished the means for raising a part of the troops with which Stark won his famous victory at Bennington. It was Langdon who at a later time as President of the Senate notified Washington that he had been chosen the first chief magistrate of the Republic. William Samuel Johnson was a graduate of Yale College and was president of Columbia College for thirteen years. His scholarly attainments received recognition not only in the United States but in Europe as well. He was chosen a Fellow of the Royal Society, and Oxford conferred upon him the degree of Doctor of Civil Laws. William Livingston, whom the British called "The Don Quixote of New Jersey," was also a Yale man and had served in the Revolution. Jared Ingersoll, of Pennsylvania, had graduated from Yale and studied law in London, and had become a leader at the bar. Richard D. Spaight, of North Carolina, was a graduate of the University of Glasgow and was but twenty-nine years of age in 1787. He continued to serve his State and nation after the adoption of the Constitution. Oliver Ellsworth, of Connecticut, was a Princeton man and a man of marked ability. He was, however, called away before the Constitution was completed and did not sign the document. George Wythe, of Virginia, was professor of law in William and Mary College at the time of his appointment as

delegate to the Philadelphia Convention; and Hugh Williamson, of North Carolina, was a graduate of the University of Pennsylvania and had served his *alma mater* as professor of mathematics from 1760 to 1763. Abraham Baldwin, of Georgia, was the founder of the University of Georgia, and at one time president of that institution.

Such then in brief was the personnel of the Constitutional Convention of 1787. To its labors we will address ourselves in the succeeding chapters.



## CHAPTER IV

### *THE CONTEST BETWEEN THE SMALL AND THE LARGE STATES IN THE FEDERAL CONVENTION*

A WORD at the outset in regard to the sources of information for the work of the Federal Convention is in point. No student of history and the science of government can approach a study of the Constitutional Convention without a feeling of gratitude toward James Madison for the ability and foresight which he displayed in keeping an accurate and comprehensive record of the debates and proceedings of that great body. The deliberations, for reasons which will subsequently appear, were held in secret, and, as the bond of secrecy was remarkably well kept, the newspapers of the time were not able to preserve an account of the debates.

The official *Journal* of the Convention, kept by the secretary, William Jackson, was intrusted to Washington at the close of the sessions, and was later published by order of Congress. This record, however, from the historical standpoint, is very meagre and unsatisfactory. Yates, of New York, took a few notes, and Luther Martin, of Maryland, in a communication to the legislature of his State, gave his view of the proceedings of the Convention. Neither of these men, however, remained in the Convention during the entire time, and both were uncompromisingly hostile to the plan of union which was adopted. They were not present at the completion of the work and did not sign the document. Their accounts of the Convention

are, therefore, of small value when compared with Madison's complete synopsis of the debates. Madison realized, as few men did, the epoch-making importance of the Convention, and undertook to keep a careful record of the proceedings. He was a critical student of all governments, ancient and modern, and said that he experienced great difficulty in obtaining complete and authentic information in regard to the formation of the great confederacies of antiquity; and that this fact, together with an appreciation of the importance of the Convention, caused him to prepare his synopsis of the debates. In order that he might do his work well he chose a seat in front of the presiding officer, with the delegates on each side. He took hurried notes of the speeches as well as he could, making use of signs and abbreviations familiar only to himself, and wrote them out in full afterward while they were still fresh in his memory. He soon became the recognized chronicler of the Convention, and his work was facilitated by the members in various ways. Many of them corrected and approved his drafts of their speeches, and some of them handed him copies or synopses of their remarks. Franklin's speeches are particularly well reported, as he frequently committed his ideas to paper and had them read by his colleague James Wilson, because his own advanced age and indifferent health would not allow him to stand and deliver his speeches in the usual way. Madison's fidelity to his task was remarkable. He was not absent a single day during the entire Convention, "nor more than a casual fraction of an hour in any day," so that his notes are practically complete. These notes were carefully treasured by Madison and were not published until after his death, which occurred in 1836. He did not deem it proper that the publication should take place while any of the members of the famous Convention were still living; and strangely enough, he was himself the last of that noble body of men to pass away. Shortly after his death the manuscript was procured from Mrs. Madison by the government of the United States and published under

its authority. This contemporary account remains the most comprehensive and almost the sole source of information in regard to the debates in the Constitutional Convention, and will be our constant guide throughout the present chapter.

May 14, 1787, was the day appointed for the meeting of the delegates, and Independence Hall, Philadelphia, was the place. Only a small number of delegates, however, appeared at the appointed time, and a quorum for the transaction of business was not obtained until the 25th. At that time there were at least two delegates present from a majority of the States, and the business of the Convention was taken up. Other delegates appeared from time to time until all the States, with the single exception of Rhode Island, were represented. There were two factions in Rhode Island and the predominant one was opposed to the Convention. The governor, however, sent a communication to that body, urging that the interests of his State be taken into consideration and intimating that it would federate at a later time. The absence of Rhode Island has usually been accounted for by selfish motives. It is generally said that the reluctance of Rhode Island to enter the Convention was due to the fact that the people of that State were intensely infatuated with the paper money heresy and were convinced that the new form of government would put a stop to the issue of such money on the part of the States. Madison said that the State was "well known to have been swayed by an obdurate adherence to an advantage which her position gave her, of taxing her neighbors through their consumption of imported supplies, an advantage which it was foreseen would be taken from her by a revival of the Articles of Confederation." It should be said, however, that Rhode Island has resented these imputations of narrow and selfish motives. This was done on May 29, 1890, when Rhode Island celebrated the one hundredth anniversary of its ratification of the Constitution of the United States.

When a quorum was at last obtained on Friday, May 25th, Robert Morris, in behalf of the delegation from Pennsylvania, nominated George Washington for the presidency of the Convention. The nomination was seconded by John Rutledge, of South Carolina, and Washington was unanimously chosen by ballot to preside over the meeting. Franklin, the only man in the Convention who was or could have been thought of besides Washington in connection with this office, was to have nominated Washington, but owing to ill health he was unable to be present in the Convention on the opening day. Franklin and the Pennsylvania delegation thus gave the Convention an auspicious beginning by their graceful attitude toward Washington. Major William Jackson and Temple Franklin, a grandson of the sage, were nominated for the office of secretary, and the former was chosen.

A committee appointed to prepare standing rules and orders for the government of the Convention reported promptly. The rules adopted were the ordinary regulations of parliamentary procedure, adapted to the existing needs. Each State, regardless of the number of delegates present, was accorded one vote. This now seems to have been a wise provision. There was some opposition to it, however. Before the adoption of the rules, Gouverneur Morris and some others expressed themselves in favor of proportional voting. They did not think it just that the small States like Delaware and Georgia should have an equal voice with Virginia and Massachusetts. The delegates from Virginia, however, working in the interest of harmony, succeeded in defeating this proposition. This must now be viewed as a very fortunate circumstance. The small States were intensely jealous of the large ones, and might have left the Convention at the very outset had they not been accorded an equal voice in the deliberations. In the Congress of the Confederation each State had one vote, and the small States expected a similar arrangement to prevail in the Convention.

The standing rules also provided "that nothing spoken in the House be printed or otherwise published or communicated without leave." This is now seen, in the light of subsequent events, to have been a wise provision. It is true, of course, that this bond of secrecy gave rise to all sorts of rumors, many of which were disquieting in respect to the work of the Convention. The enemies of a closer union took advantage of the opportunity to prejudice the minds of the people against the Convention, yet the plan of secrecy was eminently wise. Had the results of the Convention been given out in a piecemeal manner instead of as a finished whole, and had the wide differences of opinion and the angry debates of the members been known to the people at large, the adoption of the new form of government would have been very seriously jeopardized.

The standing rules also strengthened and dignified the presidency of the Convention by the provision that "all questions of order shall be decided by the President without appeal or debate" and that "when the House shall adjourn every member shall stand in his place until the President pass him."

Public opinion in the United States in 1787, both in the Convention and out of it, was in a decidedly nebulous condition. There was no approach to unanimity in favor of any particular kind of republican government. Two very distinct extremes of opinion may, however, be recognized. The States Rights party held that the various States were sovereign and independent and could cast aside the Articles of Confederation at any time. The National party, on the contrary, held that a nation had been constituted which was supreme over the States. These were the two extremes of opinion, and the question under debate was essentially that which divided the nation so sharply in the years before the Civil War. It was the identical question which Webster and Calhoun debated with so much skill and power at a later time. Between these two extremes there were all possible shades of opinion. The issue was based upon the



importance and the status of the State. The Nationalists looked upon the State simply as a local division, while the States Rights men exalted it above the central government. These ideas were destined to clash in the Convention. The majority of the leaders were in favor of establishing a national government, and their wishes were realized to a large extent. Madison, Randolph, Wilson, and Washington were in favor of a national government with adequate powers, while Yates, Lansing, Luther Martin, and Patterson, at the outset, advocated a loose confederacy. However, the most ardent and eloquent opponent of the States Rights idea was Gouverneur Morris. He paid his respects to the "sovereignty" of the States on every possible occasion and never in an uncertain way.

Then, too, during the larger part of the Convention there was a fierce antagonism between the large and the small States. In this contest the small States were the more aggressive, because they feared, as they said, that they would be "swallowed up" by the larger ones. Virginia, Massachusetts, and Pennsylvania were especially feared by New Jersey, Delaware, and Maryland. The small States were certain that if their rights were not protected by the Constitution they would be enslaved by their larger and more populous neighbors. Patterson and Brearley, of New Jersey, Read, of Delaware, and Luther Martin, of Maryland, were most active—one might almost say pugnacious—in behalf of the small States. Madison and Wilson were the most conspicuous expounders of the rights of the large States, while Sherman and Ellsworth, of Connecticut, and Franklin, of Pennsylvania, acted the part of mediators. No small part of the success of the Convention is due to the abundant good sense and moderation of these three men.

There was also a difference of opinion in the Convention in regard to slavery and the slave trade. It seemed to be agreed by a sort of common consent that slavery would not be abolished by the new Constitution; but there were differences of opinion as to the counting of the slaves for purposes

of taxation and representation. There was also a disposition to prohibit the slave trade entirely. Georgia and South Carolina championed slavery and the slave trade, while almost all the other States were in the opposition. The two Pinckneys were the most conspicuous advocates of the slavery idea, while Gouverneur Morris was its most pronounced and eloquent opponent.

On the subject of the regulation of commerce there was also a decided difference of opinion. The commercial interests of the country were localized in the North, and the Southern States were not willing to allow Congress to pass navigation acts by a simple majority vote. They insisted for a considerable time that a two-thirds vote should be essential in such cases. However, when New England yielded to the far South on the matter of the importation of slaves, the delegates from the latter section were ready to requite the concession by yielding the question upon the regulation of commerce. General Charles C. Pinckney was particularly gracious and complimentary in his acquiescence.

These questions, then, were the issues around which the great contests of the Convention were waged.

The "main business" of the Convention was opened by Edmund Randolph. He made an address in which he set forth in an effective and graphic manner the defects of the Articles of Confederation and concluded by submitting a series of resolutions which were intended to be the basis of a new form of government. The resolutions were radical in character and proposed the establishment of a strong national government. One of the most important and even crucial discussions of the Convention was thus precipitated at the very outset. Some of the delegates were in favor of establishing a strongly centralized government, while others would simply revise and improve the Articles of Confederation in a few essential particulars. Some, too, who were in favor of a strong government did not have the courage to advocate its establishment. They feared that the people would not endorse such a radical step. Washington,

however, sounded a strong and clear note which inspired a new courage in the breasts of many waverers. "If to please the people," he said, "we offer what we ourselves disapprove, how can we afterward defend our own work? Let us raise a standard to which the wise and the honest can repair, the event is in the hand of God."

The plan presented by Randolph is known more properly as the "Virginia Plan." Virginia had been foremost in bringing about the Convention, and it was felt by the delegates from that State that the initiative should be assumed by them. The task of formulating and presenting such a plan would naturally have fallen to Madison because of his special fitness, but in this instance it was assigned to Governor Randolph on account of the prestige of his official position. While the Virginia delegation was not irrevocably committed to the plan presented by Randolph, it was the result of the combined wisdom of the members and the ideas of Madison probably predominated.

The Virginia Plan was a radical departure from the old order of things. The government of the Confederation was based upon the States, not upon the people. The new plan proposed a form of government which should operate directly upon individuals without the intervention of the States. This was a radical change but a commendable one. The old plan under the Articles of Confederation had proved a failure. A government without the power to coerce is not worthy of the name, and certainly the government under the Articles of Confederation had found it impossible to coerce the States. This was one of the most lamentable weaknesses of the whole scheme. An individual may be imprisoned or deprived of his property by due process of law, but a State can be coerced only by force of arms; which in the case of the Confederation meant not at all. The Virginia Plan sought to remedy this radical defect. It proposed to have the representatives in the first branch of the national legislature chosen directly by the people and those in the second branch to be chosen by the first from

candidates nominated by the State legislatures. To further the national idea, the representatives in the national legislature were to vote as individuals and not by States. The number of representatives was "to be proportional to the quotas of contribution, or to the number of free inhabitants," as the Convention might determine. It was also proposed to allow the national legislature to veto all State laws which, in its opinion, were unconstitutional. This part of the scheme was subsequently dropped and the federal judiciary substituted in its stead. There was also provision for a "National Executive" to be chosen by the legislature with "authority to execute the national laws." The plan did not state whether this executive was to be a single individual or a committee. The Virginia delegation could not agree upon the matter and it was purposely left open. A "National Judiciary" was also provided for with power to try important cases. The judges were to be chosen by the legislature and were to hold office during good behavior.

The provisions of this plan must have been quite astounding to the delegates from the small States who were intent upon an equality of votes in the national legislature, as well as to those who desired merely a revision of the Articles of Confederation and not the establishment of a new and consolidated form of government.

In order to strengthen the plan still more, Randolph moved on May 30th, at the suggestion of Gouverneur Morris, "that a *national* government ought to be established, consisting of a *supreme* Legislative, Executive, and Judiciary." The motion was carried on the same day by a vote of six to one, Connecticut alone voting in the negative. There was much less discussion on this resolution than its importance would seem to warrant. It is probable that not all the members of the Convention appreciated to the fullest extent the meaning of those significant words "national" and "supreme." The battle lines were not yet clearly drawn, although Gouverneur Morris explained tersely and clearly the distinction between a "federal" and a "national,

supreme" government. The former, he said, is "a mere compact resting on the good faith of the parties," while the latter has "a complete and *compulsive* operation."

The Virginia Plan was then made the basis of the discussion in the Convention, and the members proceeded to take it up clause by clause. One of the first matters considered was the introduction of the bicameral system. On May 31st, it was voted that the national legislature should consist of two houses, according to the Virginia Plan. There was no debate on the question, and no vote was cast in the negative except that of Pennsylvania. The Pennsylvania delegates voted in this way out of deference to Franklin, who was favorable to a legislature consisting of a single house. This matter came up again, but the Convention adhered to its original decision.

Having decided that there should be two houses or branches of the national legislature, the next question naturally was: How shall the members of those houses be chosen? This was one of the first questions to come up in the Convention. The election of members of the first branch, or of what ultimately became the House of Representatives, was taken up first. The Virginia Plan provided that these members should be chosen directly by the people. It would seem in the light of the history of popular elections in America that this proposition would pass unchallenged, but such was not the case. Mr. Sherman, of Connecticut, contended that the members should be elected by the legislatures of the various States. He further insisted that the people "should have as little to do as may be about the government. They want information and are constantly liable to be misled." Mr. Gerry, of Massachusetts, took a similar view. He had little faith in the ability of the people to choose aright, and deplored the effects of an "excess of democracy." "The people do not want virtue," he said, "but are the dupes of pretended patriots." Reading between the lines of the speech, it is evident that Gerry had in mind such men as Daniel Shays and those

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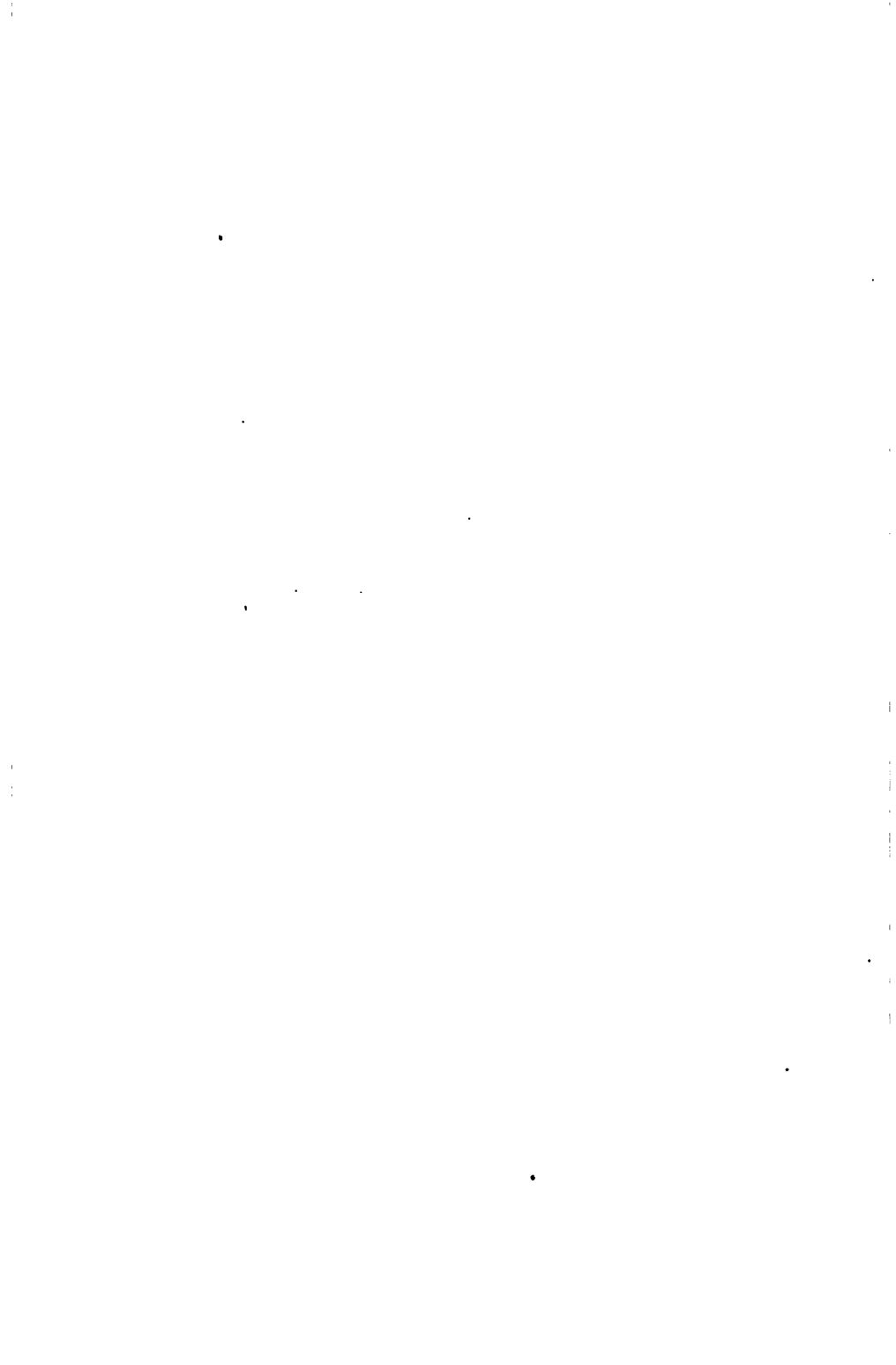
WRITTEN IN FAVOUR OF THE  
NEW CONSTITUTION,  
AS AGREED UPON BY THE FEDERAL CONVENTION,  
SEPTEMBER 17, 1787.

I N T W O V O L U M E S.

V O L. I.

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of his sort, who had recently been misleading the people of his State. Mr. Mason, of Virginia, took up the cudgel for the opposition, and argued for election by the people. He would make the first branch of the legislature "the grand depository of the democratic principle of the government." He admitted that we had been too democratic, but was afraid that we might now go to the opposite extreme. James Wilson also favored election by the people. He would raise "the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible." He believed that election by the people was necessary to the enlisting of popular confidence, and he deemed that confidence "peculiarly essential" to our republican form of government. Madison contended that it was indispensable that the members of one branch should be elected by the people. He would place the fabric of the government upon the solid foundation of the people themselves and not "merely on the pillars of the legislatures." It was decided on the 31st of May, by a vote of five States to two, that the members of the first branch of the national legislature should be elected by the direct vote of the people.

This vote, however, did not settle the matter for all time, and the question was reopened on June 6th, upon motion of Mr. Charles Pinckney, of South Carolina, who, by the way, should be distinguished from his older and more conspicuous cousin, General Charles Cotesworth Pinckney, of the same State. Mr. Pinckney contended that in a matter of this kind the people were "less fit judges" and that the election should be by the State legislatures. Mr. Sherman expressed himself to the same effect, and John Dickinson, of Delaware, principal author of the Articles of Confederation, would have the members of one branch of the legislature elected by the people and those of the other chosen by the legislatures of the States. General Pinckney said that he had more faith in the State legislatures than in the people. He remarked that the people of South Carolina wanted to make paper money a legal tender, but that the



legislature refused to do so because it "had some sense of character," which the people apparently, in his opinion, had not. Mr. Mason made a clear and forcible presentation of the question. "Under the existing Confederacy," said he, "Congress represents the *States*, and not the people of the States; their acts operate on the States, not on the *individuals*. The case will be changed in the new plan of government. The people will be represented; they ought, therefore, to choose the representatives." The Convention adopted this view by a vote of eight to three.

Yet the question, like Banquo's ghost, would not down, and was brought up again by General Pinckney on the 21st of June. General Pinckney was not satisfied with the decision of the Convention and hoped to have it reversed. In this he was aided by Rutledge, who favored an election by the State legislatures as "more refined" and more likely to secure better men. Hamilton took the opposite view. He was not ready to exalt the States. He objected to an election by the legislatures, because "it would increase that State influence which could not be too watchfully guarded against." Rufus King, of Massachusetts, supported popular elections, because "he supposed the legislatures would constantly choose men subservient to their own views, as contrasted to the general interest." Mr. Wilson "considered the election of the first branch by the people not only as the corner-stone, but as the foundation of the fabric." The question at issue amounted simply to this: Could the people be trusted to elect their own representatives? Were they enlightened, steadfast, and honest enough to do so successfully? The matter was vigorously debated and finally decided in the affirmative.

One of the most vital and even crucial questions that came up for decision in the Convention had to do with the representation of the States in the national legislature. The smaller States insisted that there should be equal representation, while the larger ones held that representation should be proportioned to the population, or to the wealth of the

States. The contention of the large States was the more logical one, but equal representation had obtained under the Articles of Confederation, and the small States had the advantage of this precedent. The contest over this point was bitter in the extreme. In fact, Delaware had instructed its delegates not to federate without the principle of equal representation.

The question of equal or proportional representation came up at an early date in the Convention, and affairs at once assumed a serious aspect. Mr. Read, of Delaware, reminded the members of the instructions of the delegates from his State, and said that in case any change were made in the present method of representation "it might become their duty to retire from the Convention." This ultimatum was delivered by Read on the 30th of May, only five days after the opening of the Convention. The matter was postponed to avoid an open rupture. The question was a vital one, however, and could not be postponed indefinitely. It was brought up again on motion of William Patterson, of New Jersey, on June 9th. Mr. Brearly, of New Jersey, argued against proportional representation. The principle "carried fairness on the face of it," he said, but was in reality "unfair and unjust." Under such a system, he held that Virginia would have sixteen votes and Georgia but one. The latter would then have no weight in the councils of the nation. "Is it fair, then, it will be asked," he continued, "that Georgia should have an equal vote with Virginia? He would not say it was. What remedy, then? One only, that a map of the United States be spread out, that all the existing boundaries be erased, and that a new partition of the whole be made into thirteen equal parts."

Mr. Patterson presented the argument for equal representation with great force and skill. He said that he "considered the proposition for a proportional representation as striking at the existence of the lesser States." He declared that the province of the Convention was to revise the Articles of Confederation and not to construct a new Constitution.

"We have no power to go beyond the Federal scheme," he remarked, "and if we had, the people are not ripe for any other. We must follow the people; the people will not follow us." He pleaded the case of the small States with rare skill. "He said there was no more reason that a great individual State, contributing much, should have more votes than a small one, contributing little, than that a rich individual citizen should have more votes than an indigent one. If the ratable property of A was to that of B as forty to one, ought A for that reason to have forty times as many votes as B? Such a principle would never be admitted, and if it were admitted would put B entirely at the mercy of A. As A has more to be protected than B, so he ought to contribute more for the common protection. The same may be said of a large State, which has more to be protected than a small one. Give the large States an influence in proportion to their magnitude, and what will be the consequence? Their ambition will be proportionally increased, and the small States will have everything to fear." In speaking of the possibility hinted at by Mr. Wilson that the large States might be compelled to confederate by themselves, Mr. Patterson remarked: "Let them unite if they please, but let them remember that they have no authority to compel the others to unite. New Jersey will never confederate on the plan before the Committee. She would be swallowed up. He had rather submit to a monarch, to a despot, than to such a fate. He would not only oppose the plan here, but on his return home do everything in his power to defeat it there." Mr. Wilson and Mr. Williamson argued for proportional representation, the latter holding that counties of different sizes in the same State were represented proportionally, and that no one questioned the equity of the arrangement.

This debate took place on Saturday, the 9th of June, and was resumed on the following Monday. In the meantime Roger Sherman, of Connecticut, had been thinking seriously over the matter and had worked out a compromise.

He proposed that there should be proportional representation in the first branch, and that in the second each State should have one vote. This proposal embodied the principle of the famous Connecticut compromise which was subsequently adopted, but it attracted very little attention at this time. The delegates from the large States were still intent upon having proportional representation in both houses or branches. And so the debate went on. Rutledge and Butler would have the representation in the first branch based on the quotas of contribution. Money is power, said Butler, and "the States ought to have weight in the government in proportion to their wealth." John Dickinson agreed with him. It was now becoming evident that those delegates who favored proportional representation were being divided into two parties. Some of them thought representation should be based on population, and others on wealth, or quotas of contribution. King and Wilson were shrewd enough to see that such a division of their forces might be fatal to their cause, and hence they moved that the present rule of equal representation should not obtain in the first branch of the new form, but that there be "some equitable ratio of representation." The adoption of this would leave the particular kind of proportional representation to be decided upon later.

At this juncture the venerable Franklin, in a speech read by his colleague, James Wilson, made a plea for harmony and declared himself in favor of proportional representation. "I now think," he said, "the number of representatives should bear some proportion to the number of the represented; and that the decisions should be by the majority of the members, not by the majority of the States." In reply to the statement that the larger States would "swallow up" the smaller ones, Dr. Franklin said: "I do not at present clearly see what advantage the greater States could propose to themselves by swallowing up the smaller, and therefore do not apprehend they would attempt it." He explained further that when Scotland was united to England the same

fears were expressed, but had not since been realized. The motion of King and Wilson was adopted by a vote of seven to three, and the Convention thus decided in favor of some kind of proportional representation. This action was taken on the 11th of June. On the same day it was decided, almost without debate, that the representation in the first branch of the legislature should be in proportion to the number of free inhabitants plus "three-fifths of all other persons." Mr. Sherman immediately made another attempt to introduce the Connecticut compromise by moving that each State should have one vote in the second branch. This motion was promptly defeated by the large States by a vote of five to six. Mr. Wilson and Mr. Hamilton then moved that the right of suffrage in the second branch should be the same as in the first. This motion was carried by a vote of six to five.

The large States were thus carrying everything in a high-handed way, but by a narrow margin. Rhode Island was not represented in the Convention, and the delegates from New Hampshire had not yet arrived. It was evident, however, that the delegates from the small States were not at all pleased with the trend of affairs and had determined to make a stubborn stand. Patterson, of New Jersey, was their spokesman, and on June 14th he announced that a plan "purely federal" in form would be presented to the Convention, in behalf of several deputations, to take the place of the plan then under discussion. The Patterson or New Jersey Plan was accordingly submitted on the following day. It had been prepared by delegates from Connecticut, New York, New Jersey, and Delaware. It is probable, too, that Luther Martin, of Maryland, assisted in the work. The plan presented by Mr. Patterson on behalf of the small States consisted of the Articles of Confederation somewhat revised. In fact, it was stated in the first resolution that the Articles should be "revised, corrected and enlarged." This plan, unlike the one presented by Mr. Randolph, provided for a loose Confederation instead of a strong

national government. Some additional powers were conferred on Congress. That body was "authorized to pass acts for raising a revenue by levying" import duties and stamp taxes. It was also empowered "to pass acts for the regulation of trade and commerce." The plan provided for a plural executive, for a federal judiciary with limited powers, for a legislature consisting of a single house with each State having an equal voice as before. The whole plan was based on the *States*, as that of Randolph was based on the *people*. The improvements offered in this plan would have been of but little avail. Experience under the Articles of Confederation should have demonstrated this fact. The plan was only a temporizing expedient and was destined to fail.

The submission of this plan practically caused the Convention to begin its work anew. Those questions which had been decided were now reopened, and for several days there was a vigorous debate upon the relative merits of the Virginia and the New Jersey plans. Mr. Lansing, of New York, preferred the New Jersey Plan because, in his opinion, the one presented by Mr. Randolph exceeded the power of the Convention, and because it was improbable that the people would adopt it. "New York," he said, "would never have concurred in sending deputies to the Convention, if she had supposed the deliberations were to turn on a consolidation of the States, and a National Government." The people, he held, will never ratify such a plan. "The scheme is itself totally novel." Mr. Patterson advocated his plan at some length and with force and effect. He insisted that the Convention would be exceeding its powers in doing more than revising the Articles of Confederation. "Let us return to our States," he exclaimed, if it seems best to have a form of government entirely new, "and obtain larger powers, not assume them ourselves." He called attention to the fact that under the Articles of Confederation each State had one vote and that no change could be made in those Articles without the consent of all the

States. He insisted that the sovereignty of the States must be maintained, and that to do this "the representatives must be drawn immediately from the States, and not from the people." He objected to the two houses in the legislature as unnecessary. "Within a particular State," he said, "where party heats prevail, such a check may be necessary," but such is not the case in the national legislature. The Virginia Plan, too, he thought, would be too expensive to operate. It would mean that two hundred and seventy members of the national legislature would be compelled to assemble at least once a year. The expense of this would be intolerable. After reading Mr. Patterson's speech, one is convinced that the delegate from New Jersey made an excellent presentation of his case.

Mr. Wilson undertook the defence of the Virginia Plan and did it effectively. Wilson was very clear as to the power of the Convention. It could "*conclude nothing*," but was at liberty to "propose anything" to the people of the States. He objected to the unicameral system provided for in the New Jersey Plan. "In a single House," said he, "there is no check," and such a system might result in "Legislative despotism." He also preferred a single to a plural executive. "One man will be more responsible than three," he remarked. "Three will contend among themselves, till one becomes the master of his colleagues." Governor Randolph was no less effective in the advocacy of his plan than was Mr. Patterson. He pleaded for a "substantial reform." He would have a national instead of a federal government. The latter, he said, had been tried and had been found woefully inadequate. He did not beat around the bush, but went boldly to the mark. "We must resort therefore," he said, "to a *national legislation over individuals*." He disposed of the argument that the Convention lacked authority to formulate a new plan of government in the only way in which it could have been effectively disposed of. "When the salvation of the Republic was at stake," he said, "it would be treason to our trust not to propose what we

found necessary. . . . The present moment is favorable and is probably the last that will offer. . . . After this select experiment the people will yield to despair."

This debate is memorable from the fact that during its progress Hamilton made his first and almost his only prominent appearance before the Convention. Hamilton's services were really of more value in the ratification of the Constitution than in its construction. He was in favor of a form of government so excessively centralized that he had no following in the Convention, and his vote was deprived of its potency by his colleagues, Yates and Lansing, who were opposed to the whole Convention idea. In fact, Hamilton was absent from the Convention from June 29th to August 13th, yet he never lost his interest in its proceedings or his sympathy with those who were endeavoring to establish a strong national government. Prior to this time, June 18th, Hamilton had been silent in the Convention, because the "superior abilities, age, and experience" of others "rendered him unwilling to bring forward ideas dissimilar to theirs," and because he could not accede to the ideas expressed by his colleagues from the State of New York. He now, however, discussed the two plans before the Convention and also presented one of his own. He declared himself at the outset to be "unfriendly to both plans," but particularly opposed to the one presented by Mr. Patterson, because it contemplated the retention of the sovereignty of the States. He was not impressed by the argument that the Convention did not have authority to do more than revise the Articles of Confederation. The Convention has power to propose anything, he contended, and we owe "it to our country, to do, in this emergency, whatever we should deem essential for its happiness. The States sent us here to provide for the exigencies of the Union. To rely on and propose any plan not adequate to these exigencies, merely because it was not clearly within our powers, would be to sacrifice the means to the end." He then proceeded to examine the two plans and to "prove that there were



essential defects in both." It was evident, however, as his argument progressed, that he was more favorable to the Virginia than to the New Jersey Plan. He opposed equal representation in the national legislature, as "it shocks too much the ideas of justice, and every human feeling." After showing the two plans to be inadequate, he exclaimed: "What, then, is to be done?" He admitted his embarrassment and said that he was discouraged by the vast extent of the country to be governed and by the formidable expense of a federal government. He was almost led to "despair that a republican government could be established over so great an extent. He was sensible, at the same time, that it would be unwise to propose one of any other form. In his private opinion, he had no scruple in declaring, supported as he was by the opinion of so many of the wise and good, that the British Government was the best in the world; and that he doubted much whether anything short of it would do in America." In regard to the executive, he declared that "the English model was the only good one on the subject." Here, then, he frankly disclosed his ideas as to the composition of a central government, although he knew that he did not have many sympathizers among his hearers. "What is the inference from all these observations? That we ought to go as far, in order to obtain stability and permanency, as republican principles will admit. Let one branch of the Legislature hold their places for life, or at least during good behaviour. Let the Executive, also, be for life." In order to make the matter more definite, he then read a sketch of a plan embodying amendments which he said he proposed to offer at a subsequent time. This plan is well worth a moment's attention. It provided for a bicameral legislature, to consist of a Senate and an Assembly. The members of the latter body were to be elected by the people and were to serve for a term of three years. The senators were to be chosen by electors, and were to hold office for life, or during good behavior. The executive power was to be lodged in a governor, who should

remain in office during good behavior, and the tenure for the judges should be the same. The States were to be subordinated to the federal government to a greater degree than had yet been proposed by anyone. The governor, or president, of each State was to receive his appointment from the general government, and was to have a negative on all laws about to be passed in his State. The above plan was not received with favor by the Convention; yet Hamilton did not sulk, but labored for what he thought was the best attainable under the circumstances.

Mr. Madison then exposed in an effective way the weak points in the New Jersey Plan. He objected to it because it would not "prevent the violations of the law of nations and of treaties which, if not prevented, must involve us in the calamities of foreign wars." It would not "prevent encroachments on the federal authority." Pennsylvania, Maryland, Virginia, Massachusetts, and New Jersey had encroached with impunity upon the authority of the general government, and there was nothing in the New Jersey Plan to prevent a recurrence of these encroachments. Neither will it "prevent the trespasses of the States on each other." The States have encroached, he continued, on each other's rights and have entered upon a policy of retaliation which is fraught with danger. The plan submitted by Mr. Patterson, he contended, "left them as much at liberty as ever to execute their unrighteous projects against each other." Finally, the New Jersey Plan would never be able to "secure the internal tranquillity of the States themselves." There was nothing in it to prevent the recurrence of a Shays rebellion or of similar acts of violence. Upon this occasion, as upon many others during the Convention, Mr. Madison combated the idea of equal representation of the States in the national legislature.

The discussion of the two plans engaged the exclusive attention of the Convention for four days, and after a most vigorous and thorough debate the New Jersey Plan was rejected on June 19th by a vote of seven to three. New

York, New Jersey, and Delaware voted in the negative, and Maryland was divided.

After the rejection of the plan submitted by Mr. Patterson, the debate on the Randolph resolutions was resumed. It seemed then that the victory of the larger States was complete, but it was soon evident that the smaller ones were not in a submissive mood. Eight days after the rejection of the New Jersey Plan, the old question of equal or proportional representation was reopened. Luther Martin, of Maryland, spoke "at great length, and with great eagerness" in favor of equal suffrage in the first branch of the legislature. He maintained "that an equal vote in each State was essential to the Federal idea, and was founded in justice and freedom, not merely in policy." He took the matter very seriously and quoted from Locke, Vattel, Lord Somers, Priestley, and Rutherford. He showed the fears and jealousies of the smaller States and declared "that the States, being equal, cannot treat or confederate so as to give up an equality of votes, without giving up their liberty. That the propositions on the table were a system of slavery for ten States. That as Virginia, Massachusetts, and Pennsylvania have forty-two ninetieths of the votes, they can do as they please, without a miraculous union of the other ten." Mr. Martin spoke with great earnestness for more than three hours; and being too much exhausted to finish his remarks, he announced his intention of resuming the discussion on the following day. This he did and argued in much the same strain. He contended that the small States would be "enslaved" under the proposed plan and said that he would prefer a system of "partial confederacies." This speech, according to the account of Madison, was delivered "with much diffuseness, and considerable vehemence."

The case for proportional representation was presented by Madison, and he was more than a match for the man from Maryland. He contended that equal representation was not just. "Why are counties, of the same State," said

he, "represented in proportion to their numbers?" He could not see why the larger States should unite to oppress the smaller ones. What common interest would unite Virginia, Massachusetts, and Pennsylvania? They are widely separated geographically. They differ in manners, religion, and staple productions. The *fish* of New England should have no special affinity for the *flour* of Pennsylvania or the *tobacco* of Virginia. Would the larger States combine to oppress the smaller ones, he continued, because of the "mere circumstance of equality of size?" Counties in a State have not combined for unrighteous purposes under similar conditions. The stronger powers do not usually unite. He appealed to history. "Carthage and Rome," he said, "tore one another to pieces, instead of uniting their forces to devour the weaker nations of the earth." England and France have not united, but have always remained rivals. "A coalition between those powers," he contended, "would have been fatal to us."

James Wilson argued on the same side of the question and compared the smaller States to Old Sarum and the other rotten boroughs of England—all of which was not very conciliatory. The tension at this time was great, and it was perhaps well that the determination of the question was put off until the following day. The critical state of the Convention is strikingly illustrated by a speech which was made by the venerable Franklin immediately after the postponement. He remarked that the Convention had been groping in the dark for four or five weeks without accomplishing anything, and suggested that they apply to "the Father of lights" to illuminate their understandings. The scene was an impressive one. "I have lived, Sir," he said, "a long time, and the longer I live, the more convincing proofs I see of this truth—that *God governs in the affairs of men*. And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid? We have been assured, Sir, in the sacred writings, that 'except the Lord build the house they labor in vain that build

it.' I firmly believe this; and I also believe that without his concurring aid we shall succeed in this political building no better than the builders of Babel. We shall be divided by our little partial local interests; our projects will be confounded; and we ourselves shall become a reproach and a by-word down to future ages." He concluded his remarks by moving that prayers be said each morning before proceeding to the business of the day. There was opposition to the motion, and no vote was taken upon it because Hamilton and others feared the effect upon the outside public. It was urged that such a step at that late day might cause "some disagreeable animadversions" and lead the public to believe, if the matter should leak out, that the "embarrassments and dissensions" of the Convention had suggested the measure.

When the discussion of the subject was resumed on the following day, June 29th, Johnson urged "that in *one* branch the *people* ought to be represented, in the *other* the *States*." This suggestion implied that compromise previously urged by the delegates from Connecticut, but now, as then, it fell upon unwilling ears. Madison pleaded with the representatives from the small States, and Gorham reminded them that their States had more to fear than the large ones in case no union were formed. Hamilton contended that the small States were striving for power, not for liberty; and Mr. Pierce, of Georgia, expressed himself in favor of proportional representation and uttered a truly patriotic and worthy sentiment when he said: "Though from a small State, he felt himself a citizen of the United States." This remark was a very timely one, as the general government was being lost sight of by many in their devotion to the States. Luther Martin was an advocate of the States Rights idea and insisted during this debate that the States were "*sovereign and independent*." Gouverneur Morris was correct when he said that the States "were intoxicated with the idea of their sovereignty." He was now as insistent as ever in favor of proportional representation. He

said that he was a member of Congress at the time when the Articles of Confederation were formulated and had agreed to equal representation because of "the pressure of public danger." He also deplored the fact that the delegates, instead of coming together "like a band of brothers," had brought with them "the spirit of political negotiators." When the vote was taken, the small States found themselves in a minority by a vote of six to four, and proportional representation for the first branch was thus reaffirmed.

Now came Ellsworth's opportunity to suggest his compromise again. The moment seemed favorable and he moved "that the rule of suffrage in the second branch be the same with that established by the Articles of Confederation." This would imply, of course, an equal representation of the States in the second branch of the legislature. Mr. Ellsworth made a strong plea for a compromise and urged that the large and small States might listen to a compromise from Connecticut, as that State "held a middle rank." He said that "he was not in general a half-way man, yet he preferred doing half the good . . . , rather than do nothing at all." We are, he said, "partly national, partly federal," and why should we not have the national principle in one branch of the legislature and the federal in the other? "He trusted that on this middle ground a compromise would take place." Even now the time was not ripe for the compromise, and the angry debate continued upon the motion for three days.

Before the vote was taken, an incident occurred which shows that the small States were leaving no stone unturned in their endeavor to carry their point. On June 30th, Mr. Brearley moved, and Mr. Patterson seconded the motion, that the president of the Convention write to the executive of New Hampshire informing him "that the business depending before the Convention was of such a nature as to require the immediate attendance of the Deputies of that State." He urged in support of his motion that the Convention needed all the assistance which it could possibly

get. It was evident, however, that the delegates from the small States desired the presence of the New Hampshire men in order to add another vote to their side of the controversy. The motion met with opposition. Rutledge "could see neither the necessity nor the propriety of such a measure." New Hampshire knew of the meeting, he continued, and could send representatives if it saw fit to do so. Mr. Wilson was also opposed to the motion. He held that such a message would violate the rule of secrecy and "would spread a great alarm." The motion was lost by a vote of five to two, and the incident was closed.

After the debate was resumed on Mr. Ellsworth's motion to give the States an equal representation in the second branch of the legislature, Mr. Wilson took the floor and made an able argument against the proposition. The delegates from the small States had frequently said that their States would not join the Union in case the form of government seemed favorable to the large ones. Mr. Wilson hoped that the smaller States "would not abandon a country to which they were bound by so many strong and enduring ties. But should the deplored event happen, it would neither stagger his sentiments nor his duty . . . If a separation must take place, it could never happen on better grounds." The proposed equality of votes in the second branch, he argued, would enable the minority to control the majority. "Seven States will control six: seven States, according to the estimates that had been used, composed twenty-four ninetieths of the whole people. . . . The rule of suffrage," he declared, "ought on every principle to be the same in the second as in the first branch." Mr. Wilson was no compromiser, and when he spoke he added nothing to the serenity of the occasion. He was possessed of some of that jealousy and fear which animated the men from the small States, and his utterances were more blunt and less politic than those of Madison. After Madison had made a strong historical argument against the motion, Franklin made a speech in which he urged the compromise

and made use of his now famous illustration. "The diversity of opinions," he said, "turns on two points. If a proportional representation takes place, the small States contend that their liberties will be in danger. If an equality of votes is to be put in its place, the large States say their money will be in danger. When a broad table is to be made, and the edges of the planks do not fit, the artist takes a little from both, and makes a good joint. In like manner, here, both sides must part from some of their demands, in order that they may join in some accommodating proposition."

These were wise and timely words, and their utterance by the sage of the Convention must have strengthened the compromise idea; yet Rufus King said that he "never could listen to an equality of votes" as proposed in the motion. Matters were again in a critical condition and the temper of the Convention was, to say the least, not judicial. Mr. Dayton, the youngest member of the Convention, made a sage and timely remark at this juncture when he said: "When assertion is given for proof, and terror substituted for argument, he presumed they would have no effect, however eloquently spoken." He did not, however, practise his excellent doctrine, but proceeded to call the proposed system "an amphibious monster." The temper of the assembly was rapidly rising to a fever heat. Luther Martin was obstinate and uncompromising, as usual. He "would never confederate, if it could not be done on just principles." Mr. Martin was losing his equanimity and was soon to depart from the Convention. Mr. Bedford, of Delaware, added fuel to the flame. He declared himself emphatically against any compromise whatever and in favor of an equality of votes. He said that the larger States were looking to their own interests, and that the smaller ones could not be expected to "act from pure disinterestedness." He then assumed the attitude of a beligerent and an alarmist. "We have been told, with a dictatorial air," said he, "that this is the last moment for



a fair trial in favor of a good government. . . . He was under no apprehensions. The large States dare not dissolve the Confederation. If they do, the small ones will find some foreign ally, of more honour and good faith, who will take them by the hand, and do them justice." Mr. King took him sharply to task for this language, remarking in conclusion that "the gentleman could only excuse it to himself on the score of passion. For himself, whatever might be his distress, he would never court relief from a foreign power."

Ellsworth's compromise was lost by a tie vote. The small States were willing to accept it, but the large ones voted solidly against it. This was probably the most critical moment in the entire Convention. "We are now at full stop; and nobody . . . meant that we should break up without doing something," was the gloomy remark of the broad-minded Sherman, who had labored so assiduously to reconcile the warring factions. General Pinckney now appeared in a useful rôle. He remarked that some adjustment seemed necessary and moved that a committee consisting of one from each State be appointed "to devise and report some compromise." Mr. Martin was willing. He had no objection to the preparation of compromises, but was decidedly opposed to the adoption of any. Sherman and Gouverneur Morris were in favor of the motion and Randolph was also, but he gloomily remarked that he did not expect much from it. Strong and Williamson favored commitment, and the latter urged that mutual concessions be made. There will be "more coolness," he significantly remarked, in the committee than on the floor of the Convention. Gerry was also in favor of referring the matter to a committee, but Madison and Wilson opposed the idea. Nothing will result from it, they contended, but delay; and the house might as well propose its own compromises. The motion was carried, and a committee consisting of Gerry, Ellsworth, Yates, Patterson, Franklin, Bedford, Martin, Mason, Davie, Rutledge, and Baldwin was

chosen to struggle with the arduous task. This action was taken on the 2d of July, and there followed an adjournment until the 5th in order to allow the committee a reasonable time in which to prepare a report, and to permit the members of the Convention to attend the celebration of Independence Day.

Promptly on the morning of July 5th, Mr. Gerry made the report for the committee. It was a compromise report, but was, on the whole, rather favorable to the small States. It provided that in the first branch of the legislature the States should have one representative for every forty thousand inhabitants, and that each State should have at least one representative, regardless of population. It also provided that money bills should originate in this branch. This latter provision was a concession to the larger States. The report also recommended that in the second branch each State should have "an equal vote." It was evident at once that the report was not acceptable to the delegates from the larger States, although it is understood that the "report was founded on a motion in the Committee made by Dr. Franklin." Wilson met the report with a snarl, and Madison with philosophic argument. "It was in vain," said the latter, "to purchase concord in the Convention on terms which would perpetuate discord among their constituents." Gouverneur Morris was also against the report and assumed a spectacular and alarmist attitude. The Latin element in his personality seemed to be gaining the ascendancy over the Anglo-Saxon. "This country," he said, "must be united. If persuasion does not unite it, the sword will. . . . The stronger party will then make traitors of the weaker; and the gallows and halter will finish the work of the sword."

Mr. Ellsworth, who was a model of sobriety, both in demeanor and utterance throughout the Convention, spoke for the compromise, while Mr. Williamson, though opposed to the report, made a very sensible and conciliatory speech. Mr. Patterson was restive and querulous. Gerry and Mason, members of the committee, were not entirely pleased with

the report, but considered it better than anarchy. The latter spoke in the true spirit of the conciliator. He remarked that it was very inconvenient for him to be absent from his private affairs, but that "he would bury his bones in this city, rather than expose his country to the consequences of a dissolution of the Convention without anything being done." When we consider this patriotic and unselfish sentiment uttered at such a critical juncture, we can, in a measure, forgive Mr. Mason for his subsequent opposition to the Constitution. Gouverneur Morris, who seemed to be losing his mental balance, then made a speech which adds nothing to his fame as a statesman. He objected to the scale of apportionment mentioned in the report. "He thought property ought to be taken into the estimate as well as the number of inhabitants." He feared that if representation were based on population alone, the great West would soon dominate national affairs. He thought that this ought not to be, and was in favor of devising some plan "to secure to the Atlantic States a prevalence in the national councils." He looked upon it as a calamity that the maritime States should hereafter be outvoted by those of the West. Mr. Rutledge, declaring that "property was certainly the principal object of society," warmly endorsed the sentiments of Morris, while Mason correctly observed that the new States when coming into the Union should "be subject to no unfavorable discriminations." Thus the debate proceeded for several days without tangible results. Gouverneur Morris continued to deal out sharp raps to the small States, and Wilson, as rigid as ever, insisted that "conciliation was . . . misapplied in this instance." The granting of the exclusive power to the first branch of originating money bills was intended to be a concession to the large States, but was not looked upon as such by their delegates in the Convention. The spirit of conciliation, at any rate, did not prevail; and the debate continued, acrimonious at times, during the first half of July. It was interrupted at intervals by a discussion of the

representation of the slaves, and no material progress was being made. The delegates from the large States were stiff-necked, and those from the smaller ones impatient. Wilson became sarcastic and Luther Martin continued irascible. The latter would choose two confederacies rather than give up an equality of votes in the second branch.

Affairs were again at a standstill. This time it was Mr. Charles Pinckney, of South Carolina, who came to the rescue. He moved to amend the compromise by substituting for an equality of votes in the second branch a number for each State, varying from one in the case of Rhode Island and Delaware to five in the case of Virginia. This plan would provide for proportional representation, but the disparity among the various States would not be so great as under the other systems proposed. Wilson immediately acquiesced, and his acquiescence was a signal for Dayton to object. Madison said that he would accept this solution as a compromise, but Sherman still held out for an equality of votes, and King preferred the doing of nothing to an allowance of an equal vote to all the States. Caleb Strong, of Massachusetts, who had not taken a very prominent part in the proceedings of the Convention, made a very sensible and conciliatory speech, while Madison and Wilson took a few parting shots at the principle of equal suffrage. The former insisted that "no proper superstructure would be raised" in case the foundation were vitiated by the adoption of equal suffrage. Mr. Wilson characterized equality in the second branch as "a fundamental and perpetual error" which would "be followed by disease, convulsions, and finally death itself. . . . He thought nothing so pernicious as bad first principles." With Madison and Wilson won over, it seemed for a time as if Mr. Pinckney had hit upon an acceptable solution of the vexed question. Such was not the case, however, as his motion was lost by a vote of six to four. The taking of this vote was the last business transacted by the Convention on Saturday, July 14th. If this contest were being waged in New England, the

following Sabbath would have been a day of special fasting and prayer. As it was, it was evident that on the Sabbath the delegates were thinking about something besides hymns and sermons. They assembled on Monday, July 16th, and promptly agreed to an equality of votes in the second branch of the legislature. Thus closed one of the most memorable contests in all American history. Connecticut, New Jersey, Delaware, Maryland, and North Carolina voted in the affirmative, and Pennsylvania, Virginia, South Carolina, and Georgia in the negative. Massachusetts was divided, Mr. Gerry and Mr. Strong voting in the affirmative, and Mr. King and Mr. Gorham in the negative.

After the consummation of the compromise the delegates from the small States were in a better frame of mind, and a more commendable spirit pervaded the Convention. The opposition now turned in and lent a helping hand. Additional powers were readily granted to the national legislature by those who heretofore dreaded the domination of the central government. Even Patterson, of New Jersey, became a "federalist of federalists." The Connecticut compromise was "a master stroke of diplomacy," and the credit for its introduction belongs to Roger Sherman and Oliver Ellsworth.

## CHAPTER V

### *THE SLAVERY COMPROMISES*

It was stated repeatedly during the debate on the Connecticut compromise that there was a more logical antagonism between the North and South than there was between the large and the small States. This is true. While the differences between the large and the small States were largely fictitious, there was a real diversity of interests in the case of the Northern and Southern States. The interests of the two sections were opposite in character. The South was agricultural, while New England was mainly industrial and commercial. Slavery existed in the South and was practically extinct in the North. These two great differences founded upon slavery and commerce constituted the basis of a sectional antagonism which was prominent at times in the Convention. These differences were settled by two famous compromises of the Constitution.

When it was decided on the 11th of June that there should be proportional representation in the first branch of the national legislature, the question arose as to whether this representation was to be proportioned to wealth or to numbers. Rutledge and Butler expressed themselves in favor of making wealth the basis, but Mr. Wilson, seconded by Mr. Pinckney, moved that representation in the first branch should be "in proportion to the whole number of white and other free citizens and inhabitants of every age, sex, and condition, including those bound to servitude for a

term of years, and three-fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each State." Mr. Gerry objected to making property the basis of representation. If we include the blacks of the South, said he, why not include the cattle and the horses of the North? The motion was carried, however, by a vote of nine to two, and there is no protest registered against it in Madison's notes, except that of Gerry noted above. The vote in its favor was a large one, only New Jersey and Delaware being in the opposition. The introduction and first adoption of the famous "three-fifths" rule by the Convention did not cause that commotion which we might expect. One wonders where Gouverneur Morris and the other abolitionists were when it was proposed to count the slaves for representation. The fact of the matter is that the "three-fifths" arrangement was a familiar one to the members of the Convention, and that Gouverneur Morris and others were to be heard on the question when it was reopened at a subsequent time.

The "three-fifths" rule was an old story to many of the members of the Convention. They had met it before in the Congress of the Confederation. On March 28, 1783, Congress was devising a method of apportioning the quotas of revenue among the States according to population. The question then arose, Should the slaves be counted? There was a difference of opinion, and various compromises were suggested. A committee reported "that two blacks be voted as one freeman." Mr. Wolcott suggested four to three, and Mr. Carroll four to one as the proper ratios. Madison suggested the since famous ratio of five to three, and his view was adopted. The New Jersey plan provided that three-fifths of the slaves be included in counting the population for the purpose of levying requisitions, but the Randolph resolutions included only the "free inhabitants."

Although the question of the representation of the slaves was quickly and almost unanimously disposed of by the "three-fifths" rule, the matter came up for discussion again

on the 6th of July. Mr. Pinckney "thought the blacks ought to stand on an equality with the whites; but would agree to the ratio settled by Congress." Mr. Patterson made a strong speech against the representation of the slaves. He looked upon them as property and remarked that they were not represented in their respective States. "And if negroes are not represented in the States to which they belong, why should they be represented in the General Government?" If a meeting of the people were actually to take place, he continued, the slaves would not vote. Why, then, should they be represented? He said that he was opposed to the encouragement which the proposed recognition would give to the slave trade, and he commented upon the fact that Congress was ashamed to use the term "slaves," but took refuge instead behind the description "three-fifths of all other persons." Mr. Butler and General Pinckney were in favor of including the blacks equally with the whites, and consequently moved to strike out the "three-fifths" clause. The step met with opposition from Massachusetts. Gerry was opposed to including more than three-fifths of the slaves, and Gorham was willing to include that number because it was the ratio adopted by Congress. Butler desired a full representation of the negroes on the ground that the labor of a slave was equal to that of a white man and should be equally represented. Mr. Mason considered the motion favorable to his State, but declared his opposition to it because it was unjust. The slaves, in his opinion, were not equal to the freemen and should not be counted as such. After a debate, less animated than the subject would seem to warrant, the Convention, by a vote of seven to three, refused to consider the "blacks as equal to whites in the apportionment of representation." Delaware voted with South Carolina and Georgia in favor of the equality of the blacks. When the discussion was resumed, Mr. King argued against the admission of the negroes to representation at all, on the ground that it "would excite great discontent among the States having no slaves."



Mr. Wilson then proceeded to attack the "three-fifths" compromise. "Are they (the slaves) admitted as citizens—then why are they not admitted on an equality with white citizens? Are they admitted as property—then why is not other property admitted into the computation?" All the members of the Convention would no doubt agree with Mr. Wilson that there was neither rhyme nor reason in the compromise, but the majority of them justified their adherence to it on the ground of expediency. Gouverneur Morris declared that he "could never agree to give such encouragement to the slave trade, as would be given by allowing them a representation for their negroes." The Convention then by a vote of six to four refused to include three-fifths of the slaves in the enumeration for representation. It now looked as if the opponents of slavery intended to exclude the negroes entirely, and such might have been the case had a compromise not been effected, later, between representation and taxation.

The matter came up again when Gouverneur Morris moved on July 12th "that taxation should be in proportion to representation." Mr. Butler agreed to the proposition, but insisted on including all the slaves in the enumeration. Mr. Davie, of North Carolina, now thought it "high time to speak out"; so he spoke out. He said that some members of the Convention were evidently attempting "to deprive the Southern States of any share of representation for their blacks. He was sure that North Carolina would never confederate on any terms that did not rate them at least as three-fifths. If the Eastern States meant, therefore, to exclude them altogether, the business was at an end." Gouverneur Morris also spoke out. He said that "he verily believed the people of Pennsylvania will never agree to a representation of negroes." Dr. Johnson, true to his Connecticut traditions, uttered a compromise idea. He held that "wealth and population were the true, equitable rules of representation," and "that all descriptions, including blacks equally with the whites, ought to fall within the computation." General Pinckney got in a word for the

protection of slave property, and Mr. Randolph insisted that the slaves should not be excluded altogether. "He lamented that such a species of property existed. But as it did exist, the holders of it would require this security." It was at this juncture that the compromise was offered by Mr. Wilson. It was to the effect that representation should be proportioned to direct taxation, and that direct taxation should vary according to the number of free inhabitants plus three-fifths of the slaves. This arrangement gave the South a partial representation for her negroes, but would make her direct taxes higher than if the slaves were not included. It was felt, then, that the South was made to pay for her increased representation by higher direct taxes. Mr. Wilson's motion was very skilfully worded, so as to give as little offence as possible. He remarked before making the motion "that less umbrage would perhaps be taken against an admission of slaves into the rule of representation, if it should be so expressed as to make them indirectly only an ingredient in the rule, by saying that they should enter into the rule of taxation; and as representation was to be according to taxation, the end would be equally attained." He consequently framed his motion in such a way as to couple the slaves directly with taxation, and only indirectly with representation; and instead of including "three-fifths of all other persons," he referred to the ratio adopted by Congress on April 18, 1783, which was the same thing less bluntly expressed. Mr. Wilson was not by nature a compromiser, but he effected this one in a very skilful manner. There seemed to be very little opposition to the proposal. Mr. Pinckney made a final attempt to make the "blacks equal to the whites in the ratio of representation," but his motion was frowned upon by a vote of eight to two, Georgia and South Carolina alone voting in the affirmative. The compromise of Mr. Wilson was then adopted on July 12th by a vote of six to two, with two States divided.

It may be well to note that in this compromise the two elements were *representation* and *direct taxation*. In many

of the books the "three-fifths compromise" is spoken of in such a way as to imply at least that it was a slavery compromise purely. It is stated that the South wished to include *all* the slaves in the enumeration for representation, and that the North would include *none* of them, and that a compromise was finally agreed upon whereby three-fifths of them were included. The question of direct taxation is often lost sight of. Now, as a matter of fact, the inclusion of three-fifths of the slaves was at one time a compromise complete in itself. When the expedient was devised in Congress in 1783, it did of itself constitute a compromise; but it cannot, without the matter of direct taxation, be called a compromise of the Constitution. At the most, it was only the reaffirmation of an old and familiar compromise. Madison had proposed it in Congress in 1783, Rutledge had seconded it, and Wilson had accepted it although he had to "sacrifice his opinion" to do so. Other members of the Convention were in Congress when the compromise was adopted, and all were familiar with it. The three-fifths clause was adopted in Congress by a vote of seven to two, with one State divided, and the plan of revenue containing the clause was adopted by all the States present in Congress except Rhode Island, which voted against it, and New York, which was divided. It was a feature of the Patterson Plan, introduced on the 15th of June and advocated by the small States. It was thus a familiar matter when it came before the Convention, and the opinions of the members had been formed and settled in regard to it. It was adopted at once, almost without debate, and by a large majority of the votes of the States. It was, of course, subsequently rejected, and might not have been finally adopted were it not for the fact that a compromise was suggested whereby representation and direct taxation were combined.

The debate culminating in the compromise was animated at times, but hardly as "fierce" as described by Fiske and others. Mr. Davie, of North Carolina, was really the only man to assume a belligerent attitude. Gouverneur Morris

was emphatic, of course, but that was his normal condition. There is nothing in this slavery debate to remind one of the days of Charles Sumner in the United States Senate. In fact, there was no real discussion of the slavery principle. There seems to have been a general understanding that slavery would not be abolished under the new Constitution. There was a strong sentiment in the Convention against it, but it was not considered good policy to divide the States on that issue. When Jefferson drafted the Declaration of Independence, he inserted in it a strong condemnation of slavery, but it was thought best to omit it from the final draft because its presence would be offensive to South Carolina and Georgia. It was thought best to prepare a declaration upon which all the States could unite. The same feeling now prevailed in the Constitutional Convention. It was mutually agreed that Georgia and South Carolina should not be alienated from the Union by the abolition of slavery. Had the contest been over the abolition of slavery, then we should have had a debate tenfold more fierce. As it was, the principle of slavery was never defended. There seemed to be no real necessity for such a defence. The Pinckneys and others who spoke for slavery enlarged upon the industrial importance, the antiquity, and the wide prevalence of the institution, but never felt called upon to defend the slavery principle, because the existence of the institution was not at stake. The real question at issue was the relation which the slaves—taking their existence for granted—should bear to representation under the new form of government.

The Convention has been criticised in some quarters for not eliminating the institution of slavery in 1787. It has been said that the Constitution contained the germs of the Civil War, and that had these germs been eradicated the deplorable contest of the early sixties would never have taken place. But it could not have been otherwise. The student of this period of American history knows full well that the Constitution was formulated and ratified by a very narrow margin. It was not at that time, as it is now,

an intensely popular document. It had most persistent, virulent, and powerful foes; and in all human probability would never have been accepted had the institution of slavery been abolished. It is easy enough to say now what the "Fathers" should have done. General Fitzhugh Lee remarks in his lectures that the framers of the Constitution might have obviated the Civil War by inserting in the Constitution a clause prohibiting the secession of the States. Such a clause would have been of no avail. In the first place, the idea of an indissoluble union was a matter of growth and could not have been manufactured in the Convention. Such an idea belongs to the days of Webster, not to those of Washington. The people accepted the idea of an indissoluble Union in 1865, but they would not have done so in 1787. Then again, constitutional provisions do not avail much against the passions of the people. When South Carolina was about to withdraw from the Union in 1860, what would it have availed had someone been able to say to it that the proposed course was contrary to the Constitution? "What is the Constitution between friends?" It is less between enemies.

The above adjustment of the slavery matter was not satisfactory to Gouverneur Morris, the ardent abolitionist, and he made an effort on the 8th of August to exclude the slaves entirely from the representation. "Upon what principle is it," said he, "that the slaves shall be computed in the representation? Are they men? Then make them citizens, and let them vote. Are they property? Why, then, is no other property included? The houses in this city [Philadelphia] are worth more than all the wretched slaves who cover the rice swamps of South Carolina. The admission of slaves into the representation, when fairly explained, comes to this: that the inhabitant of Georgia and South Carolina who goes to the coast of Africa, and, in defiance of the most sacred laws of humanity, tears away his fellow creatures from their dearest connections, and damns them to the most cruel bondage, shall have more votes in a

government instituted for protection of the rights of mankind, than a citizen of Pennsylvania or New Jersey, who views with a laudable horror so nefarious a practice." The motion of Mr. Morris was lost by a vote of ten to one, New Jersey alone voting in the affirmative; and the matter does not seem to have come up again. Thus ended an important and serious debate, but one which was really languid in comparison with that which occurred on the subject of equal or proportional representation of the States in the national legislature.

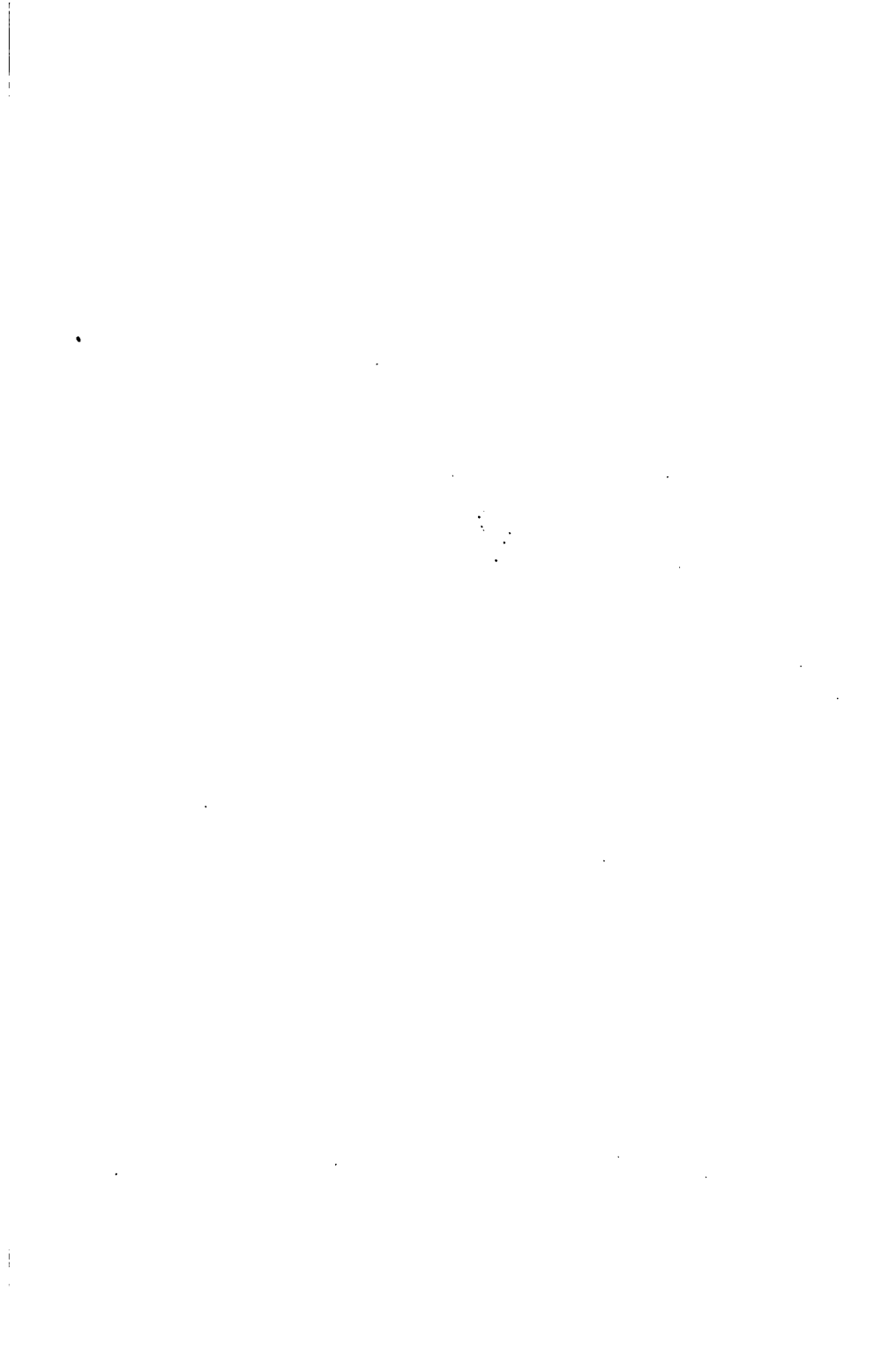
Still another compromise was necessary to lay the foundations of the Constitution. This third great compromise was effected during the latter part of the Convention and involved the slave trade and the regulation of commerce. The parties to the compromise were the New England States and those of the far South.

The report of the Committee of Detail, submitted by Mr. Rutledge on August 6th, provided that there should be no duties levied upon exports, nor on the migration or importation of slaves, that the slave trade should not be prohibited, and that a two-thirds vote of the members present in each House should be required for the passage of a "navigation act." These provisions were concessions to the States of the far South. Georgia and South Carolina feared that a duty might be levied which would interfere with the exportation of their rice and indigo. These same States were also opposed to a prohibition of the slave trade. On the other hand, the principal shipyards and other commercial interests were localized in the North, and the Southern States wished for self-defence to have an important voice in navigation affairs: hence the provision for the two-thirds vote above referred to.

These demands on the part of the States of the far South were stoutly resisted by the delegates from the North and by those from New England in particular. When the matter came up for debate on the 21st of August, there seemed to be little opposition to the prohibition of the taxing of exports, but the clauses relating to the slave trade and

commerce were instantly challenged. Luther Martin was in favor of placing a tax upon the importation of slaves or of prohibiting the importation altogether. He would discourage the slave trade. It was "dishonourable to the American character," he contended, "to have such a feature in the Constitution." Mr. Rutledge took the floor in opposition to Mr. Martin and at once delivered an ultimatum. "The true question at present is," he said, "whether the Southern States shall or shall not be parties to the Union." Mr. Ellsworth argued for a policy of non-interference. The Articles of Confederation had not regulated the slave trade, he contended, and why should the Convention take up the matter? "The wisdom or morality of slavery are considerations belonging to the States themselves." Mr. Sherman reinforced this view. He would not introduce the innovation. He deemed it "expedient to have as few objections as possible to the proposed scheme of government." Mr. Pinckney, however, was not conciliatory. "South Carolina," he declared, "can never receive the plan if it prohibits the slave trade."

The gauntlet had now been thrown into the arena, and the subsequent contest was a vigorous one. Many of the members who were willing to tolerate slavery were utterly opposed to the slave trade. Colonel Mason spoke at length and with considerable warmth against the "infernal traffic." He commented upon the dangers to be feared from a large slave population and instanced the insurrections of the slaves in Greece and Sicily. He called attention to the fact that Maryland and Virginia had prohibited the importation of slaves and that North Carolina had done practically the same thing. "All this," he continued, "would be in vain, if South Carolina and Georgia be at liberty to import." He spoke at some length of the degrading effects of slavery. It "discourages arts and manufactures," he said, and causes the poor to "despise labor when performed by slaves." It produces "the most pernicious effect on manners. Every master of slaves is born a petty tyrant." "Let us not intermeddle,"











said Ellsworth; "slavery, in time, will not be a speck in our country." A discussion of this kind was certain to bring the two Pinckneys to their feet. Mr. Pinckney entered into an elaborate historical defence of the institution. "In all ages," said he, "one-half of mankind have been slaves." He assured the Convention that the Southern States, if left to solve the problem for themselves, would in all probability stop the slave trade in the course of time, but he warned them that its prohibition at that time would not be received with good grace. General Pinckney declared that South Carolina and Georgia could not do without slaves. He defended the institution of slavery. "He contended that the importation of slaves would be for the interest of the whole Union. The more slaves the more produce to employ the carrying trade; the more consumption also; and the more of this, the more revenue for the common treasury." He would agree to a duty on the importation of slaves, but asserted that South Carolina would never accept the Constitution if it prohibited the slave trade.

Georgia was interested in the matter of the slave trade equally with South Carolina. Mr. Baldwin was its spokesman. He was for non-interference. He contended that slavery was a local matter and should not be interfered with. He also reminded the Convention that his State would not tolerate "an attempt to abridge one of her favorite prerogatives." Gerry also said that he would not meddle with the matter, but also insisted that the Constitution should not "give any sanction to the slave trade." Wilson also was opposed to putting a "bounty" on slavery. Mr. Dickinson, who was so conservative that he refused to sign the Declaration of Independence, now spoke out in clear and certain tones. He said that he "considered it as inadmissible, on every principle of honour and safety, that the importation of slaves should be authorized to the States by the Constitution." Argument, however, does not sway positive men who have come to definite conclusions, and Mr. Williamson again asserted that the Southern States must stay out of the

Union in case the importation of slaves were prohibited. John Langdon, of New Hampshire, thought that Congress should have the power to prohibit the importation of slaves, should such an act seem wise, and King thought it unfair that slaves should be exempt from duty while every other article of commerce was subject to it. Affairs seemed to be coming to a standstill, when Gouverneur Morris hinted at a compromise by suggesting that the whole matter of the importation of slaves, taxes on exports, and the passage of navigation acts, be referred to a committee. "These things," he remarked significantly, "may form a bargain among the Northern and Southern States." This was the inception of the famous compromise by which the whole matter was adjusted. After Butler had announced that he would never agree to the taxing of exports, and Sherman had stated that he would prefer to let the South import slaves rather than part with the Southern States, the whole matter was committed.

The committee succeeded in reaching a compromise, which was reported to the Convention on August 24th. This report provided that the importation of slaves should not be prohibited before the year 1800, but that a duty might be levied upon such importation. The report also recommended that the clause requiring a two-thirds vote of each House for the passage of a "navigation act" be stricken out. It was evident that some progress was being made. General Pinckney moved to substitute the year 1808 for 1800. Gorham agreed, but Madison protested. So long a term, he argued, would be "more dishonourable to the American character, than to say nothing about it in the Constitution." The substitution was, however, made by a vote of seven to four. Gouverneur Morris was becoming nettled by the exactions of the States of the far South. He remarked that he would say at once that "the importation of slaves into North Carolina, South Carolina, and Georgia, shall not be prohibited." He would have it known that this part of the Constitution was so put in compliance with the wishes

of those States. Mr. Mason took him seriously and objected to the naming of the States, as it might give offence. The introduction of the word "slaves" was also startling. Mr. Mason was not opposed to the use of the term, but Mr. Sherman was because it was "not pleasing to some people." The debate continued on the clause as amended by General Pinckney's suggestion, and Mr. Williamson again appeared in the role of a compromiser. He declared himself opposed to slavery, but thought it better to admit South Carolina and Georgia on the terms before the Convention than to exclude them from the Union. It was then agreed by the Convention that the migration or importation of slaves should not be prohibited by Congress prior to the year 1808, but that a tax or duty might be "imposed on such importation, not exceeding ten dollars for each person." This is the provision as it now stands in the Constitution.

The adjustment of the slavery matter was quite agreeable to General Pinckney, and it remains for us to see how courteous he was in carrying out the rest of the compromise. New England was opposed to the two-thirds vote for the passage of navigation acts, and the South at the outset was very much in favor of the provision. The discussion of the matter came up on the 29th of August. The South had previously insisted that the national legislature should not be allowed to pass navigation acts by a mere majority vote, because in such a case the interests of a locality might be jeopardized. Now, however, that the importation of slaves had not been prohibited, the delegates from the far South were inclined to yield a point. General Pinckney was especially conciliatory. Mr. Pinckney, however, still insisted that commerce between the United States and foreign powers should be regulated only by a two-thirds vote of each house. He looked upon the granting of the power to regulate commerce to the national legislature on any terms as "pure concession" on the part of the Southern States. He also insisted that the interests of the North and South in the matter of commerce were

quite opposed. Mr. Williamson also advocated the two-thirds vote "as more satisfactory to the Southern people." He knew that they "were apprehensive on this subject, and would be pleased with the precaution." Mr. Randolph was in favor of the two-thirds vote, and took occasion to protest against the changes which were being made in the resolutions submitted by him. It was evident that the Virginia Plan was now so modified that it was no longer agreeable to its chief sponsor. Mr. Randolph remarked "that there were features so odious in the Constitution as it now stands, that he doubted whether he should be able to agree to it. A rejection of the motion would complete the deformity of the system. . . . He could not give his assent to the plan" made up of "an accumulation of obnoxious ingredients."

General Pinckney spoke in a mild and conciliatory way against the two-thirds requirement. He remarked that the true interest of the South would demand that there be no national regulation of commerce whatever, but that because of the "liberal conduct" of the Eastern States "towards the views of South Carolina, . . . he thought it proper that no fetters should be imposed on the power of making commercial regulations, and that his constituents, though prejudiced against the Eastern States, would be reconciled to this liberality. He had, himself, he said, prejudices against the Eastern States before he came here, but would acknowledge that he had found them as liberal and candid as any men whatever." Thus conditions seemed favorable to the adoption of the compromise. General Pinckney was the ablest and most influential man in the Convention, from the far South, and was ready, apparently, to do his part to carry out the understanding which had been made between his section and the New England States on the subjects of navigation and the importation of slaves. Gouverneur Morris was opposed to the requirement of a two-thirds vote, and Roger Sherman thought a majority vote sufficient. Mr. Spaight was also opposed to the two-thirds

requirement, but on a different ground. He looked upon it as an unnecessary precaution, because, he said, the South could defend her interests at any time by building ships of her own. Mr. Butler was also, it would seem, in favor of carrying out the agreement. He considered the interests of the South and those "of the Eastern States to be as different as the interests of Russia and Turkey"; however, he declared his intention of voting against the two-thirds requirement, because he was "desirous of conciliating the affections of the Eastern States." Wilson, Rutledge, and Gorham expressed their opposition to the two-thirds requirement, and the clause was stricken out without a dissenting vote.

Thus the third and last of the famous compromises of the Constitution was consummated on the 29th of August. The delegates from Virginia opposed the compromise most strenuously during the debate, but soon saw the futility of their opposition. New England and the far South had come to an "understanding" in regard to the matter and no one could gainsay them. The compromise has perhaps, on the whole, justified itself. The retention of the slave trade for twenty years made it certain that the powerful influence of Rutledge and the two Pinckneys would be given to the Constitution when it came before the people for ratification. Its success, however, helped to alienate Randolph and Mason, of Virginia. The greatest gain, however, lay in the fact that the adoption of this compromise assured the success of the Convention. There was no longer any danger that the assembly would break up without agreeing upon a form of government. There were, to be sure, differences of opinion in regard to other features of the Constitution, but these differences were neither vital nor fundamental.





## CHAPTER VI

### *FINISHING THE WORK*

AFTER having decided upon the constitution of the national legislature, it was comparatively easy to determine what powers should be granted to Congress. This matter involved a good deal of discussion, but no angry debate such as had occurred in the adjustment of the compromises. After being assured of an equal vote in the Senate, the small States were no longer fearful of the despotism of Congress and very readily assented to the granting of important and extensive powers to that body. The details, too, in regard to qualifications and terms of office for members of the two houses were adjusted without serious difficulty. It was agreed that the House of Representatives should be composed of men chosen every second year by the people of the several States. It was also agreed that the electors for members of the House in each State should "have the qualifications requisite for electors of the most numerous branch of the State Legislature." This clause was made purposely evasive. The qualifications of electors differed so widely in the different States that the Convention despaired of finding any common ground of agreement and so evaded the entire question in a very ingenious and satisfactory way. The number of Representatives was to be proportional to the population of the various States, and after the first census had been taken each State was to have one Representative for every thirty thousand inhabitants.

The ratio was one for every forty thousand inhabitants until the last day of the Convention. At that time, upon motion of Mr. Gorham, of Massachusetts, the change was made in the ratio "for the purpose of lessening objections to the Constitution." Washington also made a short speech in favor of the change—the only speech which he made during the debates of the Convention—and Mr. Gorham's idea was adopted. It is sometimes said that the change in the ratio was made at the suggestion of Washington. This is hardly probable, as the motion for the change had been made by Gorham and supported by King and Carroll before the presiding officer spoke at all. Each State was assured one Representative, regardless of population; and in the absence of an exact enumeration of the people, a representation varying from one for Rhode Island and Delaware to ten for Virginia was agreed upon. It was also provided that the "executive authority" in each State should issue writs of election to fill any vacancies that might occur. The Speaker, a familiar official both in England and America, then as now, was to be chosen by the House itself.

As a part of the Connecticut Compromise, the States were accorded an equal voice in the Senate. It was agreed that there should be two Senators from each State, chosen by the legislature thereof to serve for a term of six years. The long term of office was intended to give permanence and stability and a degree of independence to the body, and has so operated. The Senators were also to be divided, as nearly as might be, into three equal classes, one-third of them going out of office every two years. This wise provision has served to keep a majority of experienced men in the Senate at all times. In case of vacancies, the State executives were authorized to "make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies." The intent of this provision seems perfectly plain, yet it has been the subject of much discussion. In several cases when a deadlock has occurred and the legislature has failed to elect, the governor

of a State has made an appointment under the authority of this clause. The Senate has invariably held, however, that the governor was not competent to appoint in such a case. In the last instance of such a controversy, however,—the case of Senator Quay,—the Senate held to this view by the very narrow margin of thirty-two to thirty. In the cases of new and less influential men the vote has been more decisive. In conformity with English precedent, the upper house was granted “the sole power to try all impeachments.”

An interesting and important change was made in the manner of paying the Senators and Representatives. The delegates to the Congress of the Confederation were paid by their respective States, but the plan had not worked well. It took away any national spirit which the delegates might have, and made them too dependent upon the States. The new Constitution consequently provided that the Senators and Representatives should be “paid out of the treasury of the United States.” The members of the two houses were also, except in a few specified cases, privileged from arrest during their attendance upon the sessions of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they were not to “be questioned in any other place.” Each house was also constituted “the judge of the elections, returns, and qualifications of its own members.” For the insertion of these three great “privileges” there were numerous precedents.

Congress was specifically granted the power to levy and collect duties and taxes, to borrow money, to regulate commerce, “to establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies,” to coin money and fix a standard of weights and measures, to punish counterfeiting, “to establish post-offices and post-roads,” to grant patents and copyrights, “to constitute tribunals inferior to the Supreme Court,” to define and punish offences against international law, to declare war, to provide for and

control an army and navy, and to exercise exclusive jurisdiction over an area of territory, not to exceed ten miles square, to be selected as the seat of the national government. Aside from the debate on the regulation of commerce, there was no serious difference of opinion in regard to these matters until it was proposed to give Congress the power "to subdue a rebellion in any State." This proposition called forth an animated discussion. Here the dignity of the State was involved and the dreaded spectre of States Rights suddenly reappeared. Mr. Pinckney and Gouverneur Morris were in favor of allowing Congress to put down an insurrection without waiting for the request of the State legislature. Luther Martin, as might be expected, opposed this as "a dangerous and unnecessary power." He held that "the consent of the State ought to precede the introduction of any extraneous force whatever." Mr. Gerry agreed with him. He was opposed to "letting loose the myrmidons of the United States on a State, without its consent. More blood would have been spilt in Massachusetts, in the late insurrection, if the general authority had intermeddled." It was finally agreed that the United States should not interfere in case of insurrection unless asked to do so by the legislature of the State or by the executive, in case the legislature be not in session at the time. This provision seemed to serve all practical purposes of law and order and to maintain the dignity of the State at the same time. Difficulties have arisen under this clause which the Convention did not foresee and could not be expected to anticipate.

The powers which were denied to Congress and to the States were hardly less important than those which were conferred. It was deemed wise by the Convention to tie the hands of Congress in respect to certain things. In the first place, as we have already noticed, Congress was not allowed to prohibit the importation of slaves prior to 1808; and to clinch the matter, it was also provided that this particular clause of the Constitution could not be amended. This provision was inserted at the suggestion of Mr. Rutledge,

who "never could agree to give a power by which the articles relating to slaves might be altered by the States not interested in that property, and prejudiced against it." The privilege of the writ of *habeas corpus* was not to be suspended unless the public safety should require it, as in case of rebellion or invasion. It was specified that no preference should be given by Congress to the ports of one State over those of another in the regulation of commerce.

Under the Articles of Confederation the States had run a course of wanton license, and this seemed to be an opportune time to place some very salutary restrictions upon them. One section in particular was specifically aimed at the abuses of the times. "No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility." It was also provided that no State should, without the consent of Congress, levy "imposts or duties on imports or exports," or "lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay."

The attitude of the Convention toward paper money is an interesting question and one which has been frequently discussed. It will be noticed that the States were not allowed to "emit bills of credit" or to "make anything but gold and silver coin a tender in the payment of debts." It was proposed to allow Congress the power to emit bills of credit, but the Convention refused to do so; although it did not explicitly prohibit the making of anything a legal tender except gold and silver. The sentiment in the Convention, however, was apparently overwhelmingly against making irredeemable paper money a legal tender. The Committee of Detail reported a clause on August 6th which would

enable Congress "to borrow money, and emit bills on the credit of the United States." This clause was identical with that on the same subject in the Articles of Confederation, except that in the latter case "or" takes the place of "and." When this clause came up for discussion on the 16th of August, it was met with determined opposition. Gouverneur Morris moved to strike out "'and emit bills on the credit of the United States.'" If the United States had credit," he said, "such bills were unnecessary; if they had not, unjust and useless." Madison thought it would be enough to "prohibit the making them a legal tender." Mr. Gorham would go further: he would strike out the provision entirely. Mr. Mason thought that Congress "would not have the power, unless it were expressed. Though he had a mortal hatred to paper money, yet, as he could not foresee all emergencies, he was unwilling to tie the hands of the legislature." Mr. Gorham was more decided. He thought the borrowing power sufficient for all practical purposes of government. Mr. Mercer, of Maryland, declared himself to be a "friend to paper money," but he was very mild in his advocacy of it. He did not defend it on principle, but was unwilling to alienate its friends by a definite prohibition. Mr. Ellsworth, however, had no such scruples. He was inclined to be conciliatory on most subjects, but not so on this. He "thought this a favourable moment to shut and bar the door against paper money." It "had excited the disgust of all the respectable part of America. . . . Paper money can in no case be necessary. Give the Government credit, and other resources will offer. The power may do harm, never good." Randolph, too, expressed his "antipathy to paper money," but would not vote to deprive Congress of the power to emit it, because "he could not foresee all the occasions that might arise." James Wilson, however, had no doubts upon the matter. He spoke of its mischiefs, and remarked that it would "have the most salutary influence to remove the possibility of paper money." John Langdon remarked that he

would elect to "reject the whole plan, rather than retain the three words, 'and emit bills of credit.'" Mr. Butler remarked that it would be unprecedented to give Congress the power to emit bills of credit, as "paper money was a legal tender in no country in Europe." Mr. Read, of Delaware, added his testimony in the same strain. He "thought the words, if not struck out, would be as alarming as the mark of the Beast in Revelation." The motion to strike out the objectionable words was carried by a vote of nine to two, New Jersey and Maryland voting in the negative. The members of the Convention evidently thought that by this action they had put an end to the legal tender quality of irredeemable paper money. They refused to grant to Congress the power to "emit bills on the credit of the United States." The sentiment of those who spoke on the matter was uncompromising in its hostility to paper money. Mr. Mercer was apparently the only friend of the "rag money" heresy. Madison evidently thought the action of the Convention had settled the paper money question forever. He says that he voted to strike out the objectionable words because he was satisfied that their omission would "cut off the pretext for a paper currency and particularly for making the bills a tender, either for public or private debts."

The Congress of the United States, however, did not take this view of the matter when it passed the Legal Tender Act of 1862. The members must have thought that the Convention either did not intend to prohibit the issue of such notes, or, intending to do so, actually did not. The Supreme Court of the United States also took this view on two occasions. A careful reading of the debates alone would seem to indicate the unconstitutionality of the Legal Tender Act. John Fiske, in his usual positive manner, pronounces it a "flagrant violation of the Constitution." The discussion of this important and complicated question, however, belongs to a later period.

Following the dictum of Montesquieu, who was much in vogue at the time, the Convention determined that the



central government should be composed of three independent departments,—the Legislative, the Executive, and the Judicial. This was, to a certain extent, an innovation in the United States. Under the Articles of Confederation there was no distinct differentiation. The legislative department practically constituted the entire government. There was no real executive in the modern sense of that term. There was a President of Congress, but he was a moderator rather than an executive. Neither was there any separate judiciary. The supreme judicial power was vested in the Congress. A decided step in advance was therefore taken when the Convention voted during the early part of its deliberations to establish a national government consisting of the three independent departments.

Naturally, the constitution of the legislative department entailed the greatest amount of discussion. The debates upon the three great compromises, which had to do almost exclusively with the legislative department, extended throughout almost the entire Convention. At intervals, however, the federal executive and other matters were discussed. One of the first questions to arise in connection with the federal executive was whether the executive power should be placed in the hands of a committee or of a single individual. Foreign and colonial precedents favored a single individual, while the example of the Articles of Confederation, and the fear of the "one-man power," seemed to favor a committee. The Virginia Plan, which was being followed as the general guide, left the question open, because the members of the Virginia delegation were unable to agree upon the matter themselves. The question was evidently looked upon as a serious one, and was one upon which many of the members had no very decided convictions. When, therefore, on the first of June, Mr. Wilson and Mr. Pinckney moved that the national executive should "consist of a single person," there ensued "a considerable pause." The Convention was awed for the moment by the seeming audacity of the two members. There seemed to be no one

to debate the question, and Washington finally broke the silence by asking if he should put the motion. Franklin was the first to respond, and said that, as the matter was one of the greatest importance, he should like to hear the opinions of the members before the vote was taken. Mr. Rutledge "animadverted on the shyness of the gentlemen" and declared himself in favor of vesting the executive power in a single person. He believed that "a single man would feel the greatest responsibility, and administer the public affairs best." Sherman was in his usual conciliatory mood, and would allow the legislature "to appoint one or more as experience might dictate." Mr. Sherman made a remark in this connection which was apparently unnoticed at the time, but which is worthy of a moment's consideration. He said that he "considered the executive magistracy as nothing more than an institution for carrying the will of the legislature into effect; that the person or persons ought to be appointed by and accountable to the legislature only, which was the depository of the supreme will of the Society." This idea, if carried to its logical conclusion, would have meant the establishment of cabinet government in America. Had the members of the Convention been more familiar with the actual practice of the English government at the time, Mr. Sherman's suggestion might have been taken more seriously. The fact is, the members of the Convention did not understand the actual working of the English government at that time. They were dominated by Montesquieu, who was constantly arguing for the separation of the three great departments; and they fancied that the English government was patterned after this idea, while, as a matter of fact, the three great departments in the English government were not independent but intimately fused. They were also familiar with the *Commentaries* of Blackstone, who discussed the "literary theory" of the Constitution admirably, but left the actual practice of the government untouched. Had the members of the Convention not been misled by the writings of these two great

men, we might be living to-day under a species of cabinet government not unlike that which prevails in England.

Let us now return to the discussion of the federal executive. Mr. Wilson thought a single magistrate would give "most energy, despatch, and responsibility to the office." Mr. Randolph, however, was opposed to a single executive, and spoke against the idea with much force. He regarded "unity in the executive magistracy . . . as the fortus of monarchy," and insisted that the people were "adverse to the very semblance of monarchy." He expressed himself in favor of an executive department consisting of three members chosen from different sections of the country. This idea was combated by Mr. Rutledge on the ground that it would give rise to "a constant struggle for local advantages." Mr. Wilson also added that in his opinion a plural executive would lead to "uncontrolled, continued, and violent animosities." This view prevailed; and the idea of a single executive was adopted by a vote of seven to three, New Jersey, Delaware, and Maryland voting in the negative.

The method of choice was not so easily settled. Some preferred election by the people, others by the State legislatures, others by the State executives, and still others by a system of electors. The Virginia Plan provided that the executive should be chosen by the legislatures of the States. Mr. Wilson, however, was opposed to this plan, and favored an election by the people. Gouverneur Morris was emphatic in his approval of the idea. "If the people should elect," he said, "they will never fail to prefer some man of distinguished character, or services; . . . if the legislature elect, it will be the work of intrigue, of cabal, and of faction." Mr. Sherman was not so sanguine in regard to the people. He did not consider them competent to elect a chief magistrate. He also considered that an election by the people would give an independence to the executive which would be "the very essence of tyranny." Mr. Mason, too, considered the people incompetent to elect. "He conceived it would be as unnatural to refer the choice

of a proper character for Chief Magistrate to the people, as it would, to refer a trial of colors to a blind man. The extent of the country renders it impossible, that the people can have the requisite capacity to judge of the respective pretensions of the candidates." Mr. Pinckney shared this view, and added that the people would be "led by a few active and designing men." The motion for election by the people was defeated by a vote of nine to one on July 17th, Pennsylvania alone favoring popular election.

The matter came up again on July 26th, when it was decided that the executive should be chosen by the national legislature to serve for a term of seven years. The friends of popular election, however, were not content to abide by this vote, and an effort was made on the 24th of August by Carroll and Wilson to reverse it in favor of election by the people. The effort failed, however, by the decisive vote of nine to two. The Convention thus seemed emphatic in its favor of election by the State legislatures, until the electoral plan came up for serious consideration. The merits of this plan seemed to dawn very gradually upon the framers of the Constitution. Mr. Wilson had suggested an electoral plan on the 2d of June, but it was promptly defeated by a decisive vote. Mr. Hamilton, too, in his plan submitted on the 18th of June advocated an election of the executive by electors chosen by the people from election districts, but no notice seems to have been taken of the suggestion. Mr. Ellsworth, too, on the 19th of July had moved for the election of the executive by electors chosen by the State legislatures. This plan was adopted at the time, but was discarded a week later, as we have seen, in favor of election by the legislatures without the intervention of electors. Gouverneur Morris, however, the most persistent opponent of this method of election, moved on the 24th of August that the choice be made by electors chosen by the people. This motion was lost at the time, but was carried later, and the Electoral College was established during the last part of the session.

There was some difference of opinion as to the method of choice of the executive in case the Electoral College failed to elect. Some wished to place the election in such an event in the hands of the House of Representatives, others in the Senate, and still others in the entire legislature. The interests of the large and small States were variously involved in these proposals, and an agreement was not easily reached. Mr. Sherman, however, again came to the rescue and proposed a compromise whereby the election was assigned to the House of Representatives, with the provision that in such a case each State should have one vote. This adjustment was reached in the early part of September. The partial failure of the Electoral College shows how little pure reason avails in the formulation of law. No part of the Constitution commended itself to greater favor, and theoretically it was an ideal construction, but practically it had not fulfilled expectations. It has not operated as the framers of the Constitution hoped and expected it would. It was the intention that the electors should canvass the situation thoroughly and use their best judgment in the selection of a president. Such is not the case, however, and it is now a convention of the Constitution that the elector should vote for the nominee of the political party to which he owes his election.

The remaining details relating to the presidency were settled without serious difficulty. The question of the reëligibility of the President was discussed from time to time, and it was decided on July 26th that the term of office should be seven years, and that the incumbent should be ineligible for a second term. This restriction was removed later, and the term of office reduced to four years. It was also decided that "no person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution," should "be eligible to the office of President." This provision was intended to prevent intrigue on the part of foreign powers, and the latter part of it was inserted to make such men as Alexander

Hamilton, James Wilson, and Robert Morris, born in other countries, eligible to the presidency. The President was made independent of the legislative department by the provision that the compensation for his services should "neither be increased nor diminished" during his term of office. The executive was also, in conformity with English precedent, made commander-in-chief of the army and navy, and accorded an extensive appointing power. This latter power, like that of treaty making, was to be exercised "by and with the advice and consent of the Senate." It has been found impracticable to seek the advice of the Senate beforehand in regard to treaties and appointments, although committees of that body and especially their chairmen are frequently consulted by the President.

The President's message was provided for in the following words: "He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." The message to Congress was evidently intended to serve the same purpose that the king's speech to Parliament was filling at the time. However, there was this vital difference in the two cases. The President's message was to be, and is, his own independent utterance, while the king's speech, even in 1787, was a cabinet production and represented the ideas, not of the king, but of the cabinet in general, and of the prime minister in particular. The cabinet at this time was all important in England, yet no mention of such a body appears in the American Constitution. The only reference to it is in that clause which provides that the President "may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices." This is but slight constitutional warrant for a body so powerful as the American cabinet.

The constitution of the federal judiciary occasioned but comparatively little discussion. The establishment of this, the most dignified, respected, and successful department

of the government, was quickly and quietly effected. It was a unique and a distinctive feature of the Constitution, yet its success has surpassed the most sanguine expectations. Precedents for its establishment were decidedly rare. The English government could offer no model. The House of Lords was, then as now, the highest court of appeal in England, but there is no such thing as an unconstitutional law, in our sense of the term, in England; and thus the House of Lords is not embarrassed by being called upon to set aside a law of Parliament, which, by the way, it could not do if it would. The function of the Supreme Court was unique, and there was more need of originality in this than in the other features of the Constitution. The foundation of the judiciary is to be found in the resolutions presented by Governor Randolph at the opening of the Convention. This suggestion was developed by Ellsworth, Wilson, Randolph, Rutledge, and others, and much of the work was done in the Committee of Detail and not on the floor of the Convention. There were some differences of opinion, but no violent discussions. Mercer and Dickinson were opposed to granting the Supreme Court the power to set aside a law of Congress, but were finally overruled. Various propositions were made in regard to the appointment of the judges. Some would have them appointed by the legislature, others by the Senate, and still others by the President. Wilson would have the President appoint, while Luther Martin and Sherman preferred appointment by the Senate. It was finally decided that the appointment should be by the President, "by and with the advice and consent of the Senate." This method, after a desultory debate, was agreed to late in the session of the Convention.

As the Constitution was nearing completion, it was realized by all that the form of government was by no means perfect and that changed conditions would necessitate changes in the form. Consequently, two methods of amending the document were devised. The amending was made difficult enough to preclude "tinkering" and yet easy enough to

permit of needful changes. Under the Articles of Confederation no change was possible without the consent of all the States. In this way any amendment was made practically impossible. The method proposed for the ratification of the new form of government threw this provision overboard.

When the work was done, it was necessary that a report be made to Congress and that the new form of government be ratified by the States. It was accordingly decided that the Constitution should be presented to Congress and that it should go into effect when ratified by nine States. This latter provision was decidedly revolutionary in character. The exigencies of the times demanded such a step as this. Had the Convention insisted upon a unanimous ratification for the new Constitution, that Constitution would never have gone into effect. Hence, the Gordian knot was cut and the end justified the means.

The appending of the signatures of the delegates to the document was a solemn scene. Yates, Lansing, Martin, and others of the fifty-five members had left the Convention from time to time, so that there were only forty-two present during the closing days. It was evident, too, that some of these were so dissatisfied with the work of the Convention that they would refuse to sign the Constitution. Two days before the close, when the work was practically done, Mr. Randolph took the floor and, after commenting upon "the indefinite and dangerous power given by the Constitution to Congress, proposed that "another general convention be held for the purpose of amending the new Constitution." He said that he was greatly grieved to differ from the body of the Convention "on the close of the great and awful subject of their labours," but that it would "be impossible for him to put his name to the instrument . . . should this proposition be disregarded. . . . Whether he would oppose it afterwards, he would not then decide; but he would not deprive himself of the freedom to do so in his own State, if that course should be prescribed by his final judgment." Randolph was followed by Mason, in the



same strain. He spoke of the "dangerous power and structure of the government," and prophesied "that it would end either in monarchy, or a tyrannical aristocracy; which, he was in doubt, but one or other, he was sure." He also advocated "the expedient of another Convention," and declared that without it he could not sign. He said that he could not sign the Constitution as it then stood, neither could he give it his support when it came before the people for ratification in Virginia.

Mr. Pinckney then made a very sensible speech in reply to Randolph and Mason. He remarked that the declarations of these two men "at the close of this important scene" gave "a peculiar solemnity to the present moment." In speaking of the suggestion of a second Convention, he correctly held that "nothing but confusion and contrariety" could "spring from the experiment. The States will never agree in their plans," he continued, "and the deputies to a second Convention, coming together under the discordant impressions of their constituents, will never agree . . . He was not without objections, as well as others, to the plan. He objected to the contemptible weakness and dependence of the Executive. He objected to the power of a majority, only, of Congress over commerce. But apprehending the danger of a general confusion, and an ultimate decision by the sword, he should give the plan his support."

Then arose the third malcontent, Elbridge Gerry, of Massachusetts. He, too, was in favor of a second general Convention. He set forth his objections to the Constitution, seriatim, in the following manner: "1, the duration and reëligibility of the Senate; 2, the power of the House of Representatives to conceal their *Journals*; 3, the power of Congress over the places of election; 4, the unlimited power of Congress over their own compensation; 5, that Massachusetts has not a due share of representatives allotted to her; 6, that three-fifths of the blacks are to be represented, as if they were freemen; 7, that under the power over commerce, monopolies may be established; 8, the

Vice-President being made the head of the Senate. He could, however, he said, get over all these, if the rights of the citizens were not rendered insecure—first, by the general power of the Legislature to make what laws they may please to call ‘necessary and proper’; secondly, to raise armies and money without limit; thirdly, to establish a tribunal without juries, which will be a Star Chamber as to civil cases. Under such a view of the Constitution, the best that could be done, he conceived, was to provide for a second general Convention.” It is refreshing to note, however, that the members did not take kindly to the idea of another Convention. It was promptly decided by a unanimous vote of all the States present that no such convention should be recommended.

It is interesting to note after the experience of more than a century that the members of the Convention, keen and practical men though they were, saw in many instances the imaginary rather than the real dangers. The Constitution, from beginning to end, contains clauses based on suspicion, the majority of which were entirely unnecessary. Suspicion was in the air, and it was considered to be necessary to guard against intrigue on every hand. Most of the suspicions, however, have proved groundless. The prophecies of the malcontents are, in some instances, little less than ludicrous. For instance, Mr. Mason expressed his fears because a bare majority of Congress was allowed to pass navigation acts. Such a provision, he said, “would not only enhance the freight . . . but would enable a few rich merchants in Philadelphia, New York, and Boston, to monopolize the staples of the Southern States, and reduce their value perhaps fifty per cent.” The republic has not developed into a “monarchy” or into a “tyrannical aristocracy,” as Mr. Mason feared. The dire prophecies of Mr. Gerry remain likewise unfulfilled. The senatorial term of office is not now considered too long; on the whole, decided advantages have arisen from the rule of reeligibility for Senators; the power of the House of Representatives to

conceal its journals has not been used for iniquitous purposes; the power of Congress over the places of election has not been abused; the unlimited power of Congress over the compensation of the members has been abused but once, and the abuse was speedily corrected by the decisive action of public opinion; if Massachusetts had not its just representation in 1787, it certainly has had since the first census in 1790; that three-fifths of the negroes were counted was a necessary evil; the vice-president, under our system, is a very inoffensive official; and certainly no one would now impute the iniquitous motives of a Star Chamber to the Supreme Court of the United States. In one instance only did Mr. Gerry prophesy aright. He feared that monopolies might be established under a congressional regulation of commerce. Mr. Pinckney's objections were also vain fears. It would be hardly correct to speak to-day of "the contemptible weakness and dependence of the Executive." Had Mr. Pinckney lived in the days of the Civil War he would have been convinced that there was no "dependence" or "contemptible weakness" in the executive department of the government as then administered.

The last day of the Convention arrived, and the engrossed Constitution had been read and was ready for the signatures of the members. The venerable Franklin then arose to make his valedictory to the Convention and to pronounce what proved to be almost his farewell address to the American people. He was the oldest man in the public life of America and in many ways the most conspicuous and picturesque figure. He once remarked, in his philosophical way: "I often hear persons, whom I knew when children, called *old* Mr. Such-a-one, to distinguish them from their sons, now men grown and in business; so that by living twelve years beyond David's period, I seem to have intruded myself into the company of posterity, when I ought to have been abed and asleep." His colleagues, however, did not look upon him as an intruder, and his closing years were a benediction to the American people. His speech, read, as

usual, by Mr. Wilson, was a peculiarly happy one and must have been exceedingly effective. He said that there were certain parts of the Constitution which he did not then approve, but he was not sure that he would never approve them. "For having lived long," he continued, "I have experienced many instances of being obliged by better information, or future consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that, the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others." He said that most men and most religious sects thought themselves to be in possession of all truth. In this matter there is a striking similarity. "Steele, a Protestant, in a dedication, tells the Pope, that the only difference between our churches, in their opinions of the certainty of their doctrines, is, 'the Church of Rome is infallible, and the Church of England is never in the wrong.'" Although many persons, he continued, believed in their own infallibility, there were few who expressed it so frankly as the French lady, "who, in a dispute with her sister, said, 'I don't know how it happens, sister, but I meet with nobody but myself, that is always in the right.'" Arguing along this line, he besought his fellow members to set aside their private objections and to sign the Constitution for the general good. He was opposed to a second Convention and not inclined to expect a "perfect production" from any set of men with "their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. . . . It therefore astonishes me, sir," he continued, "to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded, like those of the builders of Babel; and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, sir, to this Constitution, because I expect no better, and because I am not sure that it is not

the best. The opinions I have had of its errors I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born, and here they shall die. . . . On the whole, sir, I cannot help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion, doubt a little of his own infallibility, and to make manifest our unanimity, put his name to this instrument." He then moved that the Constitution be signed, and suggested the following form: "Done in Convention by the unanimous consent of the States present, the seventeenth of September, &c. In witness whereof we have hereunto subscribed our names." This form was made purposely ambiguous so as to gain the signatures of the malcontents. The "unanimous consent of the States" is mentioned, but not that of the individual delegates. Gouverneur Morris drew the form and placed it in the hands of Franklin, "that it might have the better chance of success." The form did gain the signature of William Blount, of North Carolina, who had before declared that he would not sign the Constitution, but it in no wise affected the determination of Randolph, Gerry, or Mason.

The speech of Franklin was not without its effect. Mr. Randolph felt called upon to apologize to the Convention for his refusal to sign the Constitution, "notwithstanding the vast majority and venerable names that would give sanction to its wisdom and its worth." He persisted in his determination, however, but explained "that he did not mean by this refusal to decide that he should oppose the Constitution without doors." Gouverneur Morris also remarked that the new plan was objectionable to him in many of its features, but that he would "take it with all its faults," as the best attainable under the circumstances. Mr. Williamson, though ready to sign the Constitution himself, suggested that the matter might be made more agreeable to some members by confining the signing to a letter which should accompany the Constitution. No

action was taken upon the suggestion, however, and the form proposed by Dr. Franklin was later adopted by an almost unanimous vote of the States. General Pinckney and Mr. Butler voted in the negative, because they "disliked the equivocal form of signing." Mr. Hamilton was anxious that every member should sign the document, as "infinite mischief" might be done by the opposition or refusal to sign of "a few characters of consequence. . . . No member's ideas were more remote from the plan than his own were known to be; but is it possible," he argued, "to deliberate between anarchy and convulsion on one side, and the chance of good to be expected from the plan on the other?" Mr. Randolph "repeated, that, in refusing to sign the Constitution, he took a step which might be the most awful of his life; but it was dictated by his conscience, and it was not possible for him to hesitate,—much less, to change." Mr. Gerry also explained his explanation by describing the "painful feelings" and the "embarrassments" of the occasion. He was gloomier than ever and still more incorrect than usual in his prophecies. He saw civil war as the inevitable and only logical result of the proposed form of government, and prophesied that in his own State, Massachusetts, the conflict would be particularly severe. It was then decided, as noted above, to adopt the form for signature suggested by Dr. Franklin. The Constitution was signed shortly after by all the members present, thirty-nine in number, except Gerry, of Massachusetts, and Randolph and Mason, of Virginia.

The question of the disposal of the journal of the Convention came up during the last moments. The deliberations had been in secret, so that the disposition of the records was an important matter. Mr. King thought that they should either be destroyed or put into the custody of the president of the Convention. He was of the opinion that "a bad use would be made of them by those who would wish to prevent the adoption of the Constitution," in case they were made public. Mr. Wilson's first thought was that they should

be destroyed; but, on maturer deliberation, he came to the conclusion that they should be preserved, as they would be useful in refuting false rumors which might be propagated. It was therefore decided by a vote of ten to one that the journal and other papers of the Convention should be placed in the hands of Washington. He was instructed to retain these papers, "subject to the order of Congress, if ever formed under the Constitution." The delegates from Maryland felt obliged to vote against this disposition of the documents, because their instructions "required them to report to the State the *proceedings* of the Convention."

The last act of the Convention was the solemn signing of the Constitution. While this was in progress Franklin made a happy remark, which, though often quoted, is never trite. "Whilst the last members were signing," says Madison, "Doctor Franklin, looking toward the President's chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that painters had found it difficult to distinguish in their art, a rising, from a setting sun. 'I have,' said he, 'often and often, in the course of the session, and in the vicissitudes of my hopes and fears as to its issue, looked at that behind the president, without being able to tell whether it was rising or setting; but now at length, I have the happiness to know, that it is a rising, and not a setting sun.'"

The work of the Convention being done, it adjourned, *sine die*, on the 17th of September, 1787.

## CHAPTER VII

### *THE RATIFICATION OF THE CONSTITUTION*

Would the States accept the work of the Convention? The people of the United States, with great eagerness, and the people of Europe, with somewhat of interest, had awaited the results of the Convention. Although that body had been in session for several months, the public knew little, and nothing authoritatively, of the nature of the plan of government agreed upon. The Convention had wisely put upon itself a bond of secrecy, and this bond was remarkably well kept. The work was now done, but there was, as yet, no authoritative utterance in regard to its character. The journal and other papers committed to the care of Washington upon the dissolution of the Convention were deposited by him in 1796 in the Department of State. Copying these papers was forbidden. They remained in the State Department until printed by order of Congress in 1818. Yates's notes on the Convention were not printed until 1821, and Madison's not until 1840. The finished work of the Convention, however, could no longer be withheld; and on the 19th of September, two days after the close of the Convention, the Constitution was printed in full in the Philadelphia newspapers. It was soon copied by the press of other cities, and the great secret was disclosed. The die was cast and the contest for ratification was on.

The first impression made by the new form of government was a decidedly favorable one. This was due somewhat to the fact that the Constitution was not so bad as



some had feared. The little items of information which had leaked out from time to time had been distorted and magnified into all conceivable shapes and sizes. In the absence of positive information, the imaginations of some had begun to work with the most astonishing results. One rumor had it that the local governments were to be abolished entirely under the new form. Another was to the effect that a monarchy was to be established, with the Bishop of Osnaburg upon the throne. There was a large number of persons in the United States at the time, mostly Loyalists, who would have been pleased to see a monarchy established. The Bishop of Osnaburg might easily be a candidate for the throne in such an event. He was none other than the Duke of York and second son of George III. of England. He was twenty-four years of age at the time, and had been chosen Bishop of Osnaburg at the tender age of one year. His ecclesiastical duties, however, do not seem to have weighed heavily upon him, although he continued to be called the Bishop of Osnaburg until created Duke of York. His ethical standards do not seem to have been of a very high order, yet he was seriously thought of by the Loyalists as a probable and becoming sovereign of the new America.

It is, of course, a well-known fact that such a reversion to monarchy was seriously discussed in some quarters. Hamilton remarked at the time: "A reunion with Great Britain, from universal disgust at a state of commotion, is not improbable, though not much to be feared. The most plausible shape of such a business would be the establishment of a son of the present monarch in the supreme government of this country, with a family compact." Rumors of such a proceeding as this were current from time to time during the Convention, and the members received numerous and anxious inquiries from their constituents in regard to the proceedings of the "dark conclave." The unsatisfactory replies which the members thus addressed were compelled to give did little to allay the fears of the people. These disquieting and absurd rumors were, however, speedily

dissipated by the appearance of the document itself, and the new form of government was received with no little enthusiasm. It was obviously an improvement upon the old form, a distinct step in advance, and a form with some real power and vigor. Those who had suffered most from the impotency of the Articles of Confederation were naturally the first to hail the new form with delight. All who spoke were praising the new Constitution, and no word of adverse or hostile criticism was being uttered.

This stage was of short duration, however. The storm which was soon to break in all its fury was simply gathering. Opposition began to develop and found expression in various ways. Many interested persons were opposed to the new form from selfish motives; and many able, honest, and patriotic men found themselves compelled to declare against it for various reasons. The merits and demerits of the Constitution were discussed in pamphlets, in the newspapers and periodicals, and in public assemblies of different kinds. It was a period of keen controversy, and the lines of demarcation were being clearly drawn between the advocates and the opponents of the new form of government. Two new political parties were formed on this issue. The old parties—the Whigs and the Tories—had vanished with the Revolution; and their places were taken by the Federalists, who advocated the adoption of the new Constitution, and the anti-Federalists, who were opposed to its adoption. From September of 1787 to July, 1788, the contest between these two parties was fierce and memorable. All the great men of America were compelled to stand either for or against the Constitution. The division was not remarkably uneven. Nearly all the members of the Philadelphia Convention and many other eminent men were prepared to advocate the ratification of the new form of government, yet there were in the ranks of the opposition such men as Governor Clinton, of New York, Elbridge Gerry, of Massachusetts, and Patrick Henry, George Mason, and Richard Henry Lee, of Virginia. The ratification of the Constitution hung

in the balance until the 21st of June, 1788, at which time New Hampshire, the ninth State, approved the document. In the memorable contest of these months the giants of the period appeared to as great an advantage as they had done in the Convention itself—in some instances greater. Though pitted against no mean adversaries, they won a notable victory. James Wilson, in Pennsylvania, Madison, in Virginia, Fisher Ames, Gorham, Strong, and King, in Massachusetts, and Hamilton, in New York, were among the most conspicuous and successful defenders of the Constitution. Madison labored incessantly with voice and pen to convince his State and the nation that the Constitution should be ratified; while Alexander Hamilton, in addition to winning one of the most notable victories in the annals of political history by getting the Constitution ratified in spite of the fierce opposition of Governor Clinton and his party, gave his valuable assistance to the struggling Federalists in other States. The speeches and writings of these men were circulated far and wide. Their utterances were voluminous, but undoubtedly the most important single contribution to the Federalist cause was that magnificent series of eighty-five essays or papers by Hamilton, Madison, and John Jay, which appeared in a New York newspaper in 1787 and 1788. Writing over the common name of "Publius," these men expounded and defended the new Constitution in a masterly and convincing way. Their papers, since collected and published and many times reprinted under the title *The Federalist*, constitute the most remarkable production of American political genius. These essays were hurriedly dashed off in the heat of a fierce political contest. It could not have occurred to Hamilton as he was writing the first of the series in the cabin of a sloop on the Hudson, in October, 1787, that he was inditing the opening lines of a political classic. Yet such was the case. Nearly all the vast pamphlet literature of the period has proved ephemeral in character, but the *Federalist* still stands, a monument to Hamilton, Madison, and Jay.

In order to obtain a correct and comprehensive account of the struggle for ratification, it will be necessary to review the contest as it occurred in each State. During the closing days of the Philadelphia Convention it was decided that the Constitution should be transmitted through Congress and the State legislatures to the people, to be ratified by them through the medium of conventions. The committee on "style and arrangement" was instructed "to prepare an address to the people, to accompany the present Constitution, and to be laid with the same, before the United States in Congress." This letter, which was reported with the Constitution on September 12th, was short and to the point. No detailed defence or exposition of the Constitution was attempted. "In all our deliberations on this subject," the letter runs, "we kept steadily in our view that which appeared to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence." It was further stated that the Constitution then submitted was "the result of a spirit of amity," and of "mutual deference and concession. . . . That it will meet the full and entire approbation of every State is not, perhaps, to be expected; . . . that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all; and secure her freedom and happiness, is our most ardent wish." This letter was signed by Washington as president, in behalf of the Convention.

The Convention also passed a resolution to accompany the Constitution when submitted to Congress. This resolution was very skilfully phrased to avoid the appearance of dictation on the part of the Convention. Congress at the time had but little honor and less dignity, and was very chary of both. The Convention, knowing the sensitive nature of that body, worded its official communications to it with great care. It was resolved that the Constitution be submitted to Congress, and it was declared to be

"the opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People, under the Recommendation of its Legislature, for their Assent and Ratification." It was also suggested in the resolution that each convention ratifying the same should send notice of its act to Congress. It was again the "opinion" of the Convention, according to the resolution, that Congress should, when nine States had ratified, make all suitable provisions "to execute this Constitution."

The Constitution reached Congress in New York on the 20th of September, three days after the adjournment of the Convention. It was met with stubborn opposition from the very outset. Richard Henry Lee, of Virginia, Nathan Dane, of Massachusetts, and the entire delegation from New York, were up in arms against it. Its progress was obstructed on every possible pretext. It was selfishly held, in the first place, that the Constitution would terminate the existence of the Congress of the Confederation, and the members were besought not to vote themselves out of office by giving an endorsement to the new plan. This argument did not avail much, however, when attention was called to the fact that the Constitutional Convention was held by order of Congress, and that the latter body was thus bound to receive the finished work. It was also held by the opponents of the Constitution that the Convention had exceeded its powers by formulating a plan of government entirely new, and hence was entitled to no further consideration. Seeing that they would not be able to shelve the Constitution in this way, the opposition sought to fetter it by amendments. They held that the Constitution, if submitted at all, should be submitted with certain amendments to be added by Congress. Here again were dangerous rocks and shoals. If amended after the ideas of its opponents, there could be but very little hope of the ultimate success of the Constitution. The amendments were not made, however. James Madison was on guard. After the adjournment of the Convention he had gone from Philadelphia to

New York as speedily as the Greeks had gone from Marathon to Athens when the Persians threatened that city. He stood ready to fight anew the battle of the Constitution; and aided by the gallant and eloquent "Light Horse Harry Lee," he succeeded in getting the Constitution submitted to the States without amendments. It was unanimously resolved on the 28th of September that the Constitution, with the resolutions and letter accompanying the same, "should be transmitted to the several State legislatures" in order to be "submitted to a Convention of delegates chosen in each State, by the people thereof, in conformity with the resolves of the Convention made and provided in that case." The Constitution was thus submitted to the States by Congress *unanimously* and *without* approval. This was the result of a compromise. In order to obtain a unanimous vote the Federalists were compelled to withhold any word of approval.

It was now time for the people of the States to act through their conventions. These conventions were to ratify or to reject. The issue was clear cut.

The contest was a battle royal. One by one, the critics began to deliver themselves. With voice and pen they assailed the new Constitution. The assailants, too, were formidable antagonists. There were Clinton, Lansing, and Yates, in New York; Patrick Henry, Richard Henry Lee, Mason, and James Monroe, the future president, in Virginia; Elbridge Gerry, in Massachusetts; Samuel Chase and Luther Martin, in Maryland; and scores of others. In addition to the avowed opposition of these men, it should be said that Governor Randolph, of Virginia, Samuel Adams, of Massachusetts, and Governor John Hancock, of the same State, had taken no stand upon the matter, but were generally supposed to be silently hostile to the new form.

After the publication and submission of the Constitution, the contest opened with a war of tracts. The English-speaking people have been called "a race of pamphleteers." The correctness of this appellation was never more evident

than at the time of which we are speaking. The newspapers of 1787-1788 teemed with articles of various kinds for and against the Constitution. The anti-Federalist writers were particularly severe in their strictures. The late Paul L. Ford collected and published two large volumes of these essays and pamphlets, which show in an unmistakable manner the temper of the times.

Much, though not all, of the opposition to the Constitution was of an abusive nature. Scores of able and honest men were conscientiously opposed to the new Constitution. By these it was urged that the new form of government was too expensive; that it would ruin the State governments; that the liberty of the press was not assured; that trial by jury was abolished in civil cases; that the federal judiciary would destroy the State judiciary; that there was no bill of rights; that there was no provision against a standing army; that Congress might oppress the citizens; that the limits of the powers of the government and the rights of the people were not clearly defined; that religious toleration was not provided for; that the army might be billeted upon the people; that annual elections and rotation in office had been abolished; that the number of representatives was too small; that the Senate was aristocratic; that the Supreme Court was too powerful; that the powers of the Executive were too extensive and might lead to oppression; that the power of taxation had been vested in Congress; that the sovereignty of the States had been destroyed; that certain acts of sovereignty, such as the coining of money, the regulation of commerce, and the levying of duties, had been forbidden to the States; and finally, that the government had three distinct departments and was based on individuals and not on States. These objections are already familiar to us from our study of the formation of the Constitution, and we find them repeated again and again in the course of the debates in the thirteen conventions.

Delaware was the first State to ratify the Constitution. Its convention was not the first to assemble, but it was

the first to reach a conclusion. Public opinion in the State was well crystallized. The people of Delaware had the benefit of the discussions in the Philadelphia press and in the Pennsylvania convention, which assembled at an earlier date. They had an intelligent comprehension of the whole situation and came to a speedy conclusion. During the early days of the Constitutional Convention, Delaware had been one of the most stubborn of the objectors to the Virginia Plan. Its self-preservation seemed to be at stake. Mr. Read, one of its delegates, had assumed a threatening attitude and had informed the Convention that the delegates from his State would be compelled to withdraw in case the present plan were persisted in. Mr. Gunning Bedford, Jr., of the same State, was even more belligerent, and declared that he might be forced to court the assistance of some foreign power unless the large States made some concessions to the smaller ones. The temper of the State, however, was entirely changed by the adoption of the Connecticut compromise, whereby the States were given an equal voice in the Senate. The convention had a very easy task to perform and the little State led the van by coming forward on December 7, 1787, with the unequivocal declaration, "we the Deputies of the Delaware State . . . do . . . fully, freely, and entirely approve of, assent to, ratify, and confirm the said Constitution." There was no ambiguity in this; there was no contest; there were no amendments offered; there was no dissenting voice, and Delaware won a proud place for itself in the sisterhood of States by its prompt and decisive action.

In addition to the moral support thus given to the new Constitution by the State of Delaware, one of its most illustrious sons, and a delegate to the Philadelphia Convention, gave his effective support to the new form. Early in 1788, when the States were hesitating and waiting for each other to act—when the fate of the Constitution hung in the balance—John Dickinson spoke his sentiments boldly in a series of strong letters signed "Fabius." In these nine letters,



which appeared in a Delaware newspaper, Mr. Dickinson answered in detail the various arguments which had been brought against the Constitution, and then proceeded to give an extended and philosophic discussion of government. The letters are strong in historical citation, and the whole series is eminently conservative and sane. It is in striking contrast in this respect to the lurid rhetoric employed by Elbridge Gerry in his attacks upon the Constitution. Dickinson had sometimes been conservative to a fault, but in this instance he had no hesitation in commending the new union. This act was particularly unselfish, since the new form was to supplant the Articles of Confederation, of which he was the principal author.

The first real contest over the Constitution took place in Pennsylvania. The Constitutional Convention adjourned on the 17th of September, and in the forenoon of the following day Benjamin Franklin, President of the State of Pennsylvania, accompanied by his seven colleagues in the Convention, submitted the new form of government to the legislature of the State and bespoke for it a favorable consideration. On the following day the Constitution was printed in the *Packet*, the *Journal*, and the *Gazeteer*, of Philadelphia, and opposition was aroused at once. This opposition soon degenerated in many instances into abuse. The Pennsylvania delegates to the Constitutional Convention were mercilessly and maliciously lampooned. Before the State convention assembled, while it was in session, and later, these men were relentlessly vilified. James Wilson was "Jimmy," "James, the Caledonian," and "the lieutenant-general of the myrmidons of power." Mr. Wilson, as the most active advocate of the ratification of the Constitution, received most attention in the twenty-four letters of "Centinel," which appeared in 1787-1788. Other prominent men, however, did not escape the vile attacks. Franklin was virtually called a fool because of his advanced years; Robert Morris was "Bobby, the Cofferer," who wanted a new form of government because he was hopelessly in debt

to the old; Gouverneur Morris was "Gouvero, the cunning man"; and Thomas Mifflin was "Tommy, the Quartermaster-general," who supported the new form because he was \$400,000 short in his accounts.

The Federalists were more numerous, but not so aggressive. In the eastern part of the State, especially in and around Philadelphia, they were in the majority; but in the lawless mountain districts of the west the people were not disposed to look upon the new and stronger form of government with much favor. Consequently, when the Constitution came before the legislature there was a spirited contest. The Federalists were in the majority and eager for the fray. The anti-Federalists, on the contrary, were in favor of delay. They felt that they were in a minority at the time; but a new election was to be held early in November, and they hoped that a vigorous campaign with the Constitution as the issue would give them a majority. Congress had not yet acted, but the Federalists were not disposed to wait longer. It was now the 28th of September, and the legislature had voted to adjourn on the 29th; consequently, there was necessity for speedy action. George Clymer, a member of the Philadelphia Convention, boldly took the initiative by moving on September 28th—the day upon which Congress was acting on the Constitution—that a convention be called to consider the new Constitution. The anti-Federalists raised a storm of protest. They said that the motion was premature, because Congress had not yet acted and that there were insuperable parliamentary objections to the immediate passage of such a resolution. The Federalists, however, were not to be denied; and brushing away these objections as mere technicalities, they carried the resolution by a vote of forty-three to nineteen. The minority were indignant, and not without reason, it must be admitted, at what they characterized as high-handed proceedings. The date for the Convention had not yet been fixed, so the anti-Federalists determined to break the quorum by absenting themselves and thus frustrate the plans of their opponents. There were sixty-nine members

in the Assembly, and forty-six were required for a quorum. Not one of the nineteen dissenters attended the next session, and only forty-four members were present. The sergeant-at-arms was sent after the absentees, but they defied his authority and remained away. No business could be transacted, and an adjournment took place. In the meantime, Congress had taken action submitting the Constitution to the several States, and a rider had arrived in Philadelphia bearing the news. This would remove one objection of the anti-Federalists, and there was hope that they would return to the Assembly. It was a false hope, however, as the nineteen still held aloof. The mission of the sergeant-at-arms was again fruitless. The city was at fever heat, the recalcitrants were roundly condemned for their obstructionist policy, and the people at length determined to take the matter into their own hands. This they did by breaking into the lodgings of two of the anti-Federalists, seizing them, and dragging them through the streets to the State House, and finally thrusting them into the Assembly room, "with their clothes torn and their faces white with rage." A quorum was now made, and the Convention was called for November 20th. Thus, "twenty hours after the Continental Congress submitted the Constitution to the States, the Assembly of Pennsylvania called a convention to ratify or reject it." The Assembly then adjourned, with the Federalists exultant and their opponents beside themselves with rage.

Election day was the 6th of November, and on that day many turbulent scenes occurred. The anti-Federalists met with a crushing defeat in Philadelphia, and the Federalists were much elated. An incident which happened during the early morning hours of the following day shows the state of feeling existing between the two parties. Shortly after midnight of election day a party of "tipsy revellers," by way of celebrating their victory, stoned the house of Major Boyd, which was the headquarters of several prominent anti-Federalists. All this was illegal, of course, and complaint

was made to the legislature; and a proclamation was immediately issued offering a reward of \$300 for the capture and conviction of the guilty persons. The proclamation was issued by Franklin as president of the State, and although it was outwardly a very serious and dignified document, humor lurked between its lines. The proclamation spent itself in thunder. No search was made, no arrests followed, and nothing whatever came of the attempt to punish the law-breakers. The above incident is of no particular importance in itself, but it stands as a type of similar outbreaks which took place from time to time in the various States.

The convention met according to call on the 20th of November and proceeded to business on the following day. This convention was the first to take up a consideration of the new Constitution. The anti-Federalists began their work at once. They contrasted the proposed national Constitution with the constitution of the State of Pennsylvania, and showed that the two forms were direct opposites in all essential particulars. The State constitution provided for one house in the legislature; the national, for two. According to the State constitution, the President was chosen by the legislature; the national provided for an Electoral College for this purpose. The State constitution had a bill of rights: the national had none. The State constitution provided for a president's council; the national did not. The State constitution provided for annual elections and rotation in office; the national did not. Thus, they argued, the two constitutions are diametrically opposed in all essential respects; and, as a consequence, the proposed national Constitution should be viewed with suspicion. Its adoption, they held, would virtually amount to a condemnation of the State constitution, to which the inhabitants of Pennsylvania were very warmly attached. This line of argument had no little influence, but was by no means conclusive. The other objections mentioned in a preceding part of this chapter were set forth, only to be met by the defenders of the new Constitution.

Of these defenders James Wilson was the ablest, best informed, and in every respect the most effective. He was a most skilful expounder of governmental principles and an adept in the art of refutation. His most efficient lieutenant was Thomas McKean, chief justice of the State supreme court. The debate continued until the 12th of December, at which time the Constitution was ratified by a vote of forty-six to twenty-three. On the following day the members of the convention, accompanied by the State and city officials and others, went to the capitol in solemn state and read the articles of ratification to the assembled people. The good work was done, but the State of Pennsylvania was stirred from end to end. It is probably not too much to say that the anti-Federalists of that State were the most irreconcilable in America. In Massachusetts and in some other States the contest was bitter in the extreme, but at its conclusion the opponents of the Constitution accepted the verdict of the majority, for the most part, with very good grace. But in Pennsylvania it was otherwise. A rebellious spirit had been engendered, and some of the more radical were in favor of making an attempt to prevent the organization of the government under the new form. An incident which occurred at Carlisle illustrates the intensity of the feeling. When the Constitution had been ratified there was great rejoicing, and the last Wednesday in December was appointed as the date for a celebration at Carlisle. The usual bonfires and cannon were to occupy the principal streets, but the irate anti-Federalists appeared upon the scene, drove away the jollifiers, spiked their cannon, burned a copy of the Constitution, and departed, shouting: "Damnation to the forty-six: long live the virtuous twenty-three!" The next day the Federalists assembled in arms and carried out their programme; but at the conclusion of the celebration the anti-Federalists again appeared, and burned two effigies labelled "James Wilson, the Caledonian," and "Thomas McKean, Chief Justice." Several arrests were made, but the men were speedily set

free by a jail delivery planned and executed by companies of militia.

The third State to ratify the Constitution was New Jersey. The convention of this State was in session before the adjournment of the Pennsylvania convention and reached a decision six days after Pennsylvania. The new Constitution was very favorably received in New Jersey. There seemed to be no formidable objection to it in any quarter. The fears of the State had been allayed by the Connecticut compromise, and the people were well pleased that the regulation of commerce had been placed in the hands of Congress. An attempt was made to bring outside pressure to bear upon the State. The anti-Federalists of New York were alert and anxious to influence the action of New Jersey. The people, however, turned a deaf ear to their entreaties, because they saw that their interests lay in another quarter. The convention, after a brief and uneventful session, unanimously ratified the Constitution on the 18th of December, 1787.

The work of ratification was progressing as well as could be expected. Three States had ratified—two of them unanimously and the third by a vote of two to one. Two of the small States had now—thanks to the Connecticut compromise—accepted the Constitution, and the others were likely to do the same. The anti-Federalists could not hope then to realize much from the jealousies and fears of the small States. No Southern State had yet ratified, however, and the anti-Federalists were still hoping that the South would rebel against the regulation of commerce by a majority vote in Congress. This was not to be so, however, as the compromise upon the slave trade won the approval of many of the most influential men of the South.

The Georgia convention, on January 2, 1788, unanimously ratified the Constitution. The situation in the State was in every way favorable to the new form of government. The people were well satisfied with the solution of the slavery question in the Constitutional Convention, and they

had felt the need of a stronger and more effective general government. Even just at this time the impotency of the Confederation was being impressed upon them. Their slaves were escaping to Florida and they were unable to recover them, and the Creek Indians were making raids upon their frontiers. The people felt that the new and more centralized form would afford them a more adequate protection from their lawless and savage neighbors. Then, too, Georgia was at the extreme south of the United States and was uninfluenced by the general trend of events in the North and East. On account of its isolation, the anti-Federalists of other States were not able to perfect an opposition to the new Constitution.

Connecticut was the fifth State to ratify. Here there was some opposition, but not a formidable one. The change from a loose confederation to a consolidated government was too radical for some. There was opposition also to the granting of the general power of taxation to Congress, and especially the power of levying duties. These features of the Constitution, and in fact all others which were attacked, were ably expounded and defended by Oliver Ellsworth. He was assisted by Governor Huntington, Oliver Wolcott, and Richard Law. In fact, the fragment of the discussion which is preserved in Elliot's *Debates*, is practically made up of the speeches of these three men. The convention met on the 4th of January, and, after sitting for five days, ratified the Constitution on the 9th, by a vote of one hundred and twenty-eight to forty.

All eyes were now centred upon Massachusetts. The anti-Federalists of that State were known to be strong and active, and it was felt that no plan of union could be successful without the coöperation of Massachusetts. The State had always been a power in American history and now exerted an influence quite aside from that due to its wealth and population. It was one of the oldest of the States, had been a leader in the Revolution, and its sons had always been foremost in the nation's councils. It is true

that in recent years it had shown symptoms of temporary mental aberration. It had been infected by "Shaysism," and was suffering from excessive democracy. Yet Massachusetts was still a name to conjure with, and its endorsement of the new Constitution was looked upon as a matter of great moment. Some circumstances were peculiarly unfavorable to the new form of government. The people of Massachusetts were exceedingly democratic. The spirit of liberty was militant among them. State Rights were cherished as a precious heritage, and local government was highly developed and greatly prized. Nowhere did the town meeting thrive more vigorously, and nowhere was there a greater fear of delegated power. The constitution of the State was replete with guarantees for the liberty of the people. These were a sedative for jealous souls, and the new Constitution contained no such provisions. There was no bill of rights. It was no more than natural, then, that Samuel Adams, the "man of the town-meeting," should receive the proposed form of government with silent opposition.

The convention met on the 9th of January. At the opening of the convention, the anti-Federalists were undoubtedly in the majority, and a motion to reject the Constitution would have been carried at any time previous to the proposal of amendments by John Hancock. On the 22d of January, Mr. Nasson, an anti-Federalist, stated in a letter that he estimated that there were one hundred and ninety-two members against ratification and one hundred and forty-four in favor of it. Friends of the Constitution made similar estimates. The convention was a very heterogeneous yet representative body. It contained many of the ablest and best known men in the public life of the State, an unusually large number of learned and broad-minded clergymen, and, it is said, about eighteen or twenty members who had "seen service" in Shays's army. The western counties sympathized with the ideas of Shays, and sent delegates to the convention who entertained the same heretical views. These men were in favor of paper money



in unlimited quantities and the abolition of debts. Many of them sincerely believed that they had grievances and that the only remedy for them lay in the revolutionary methods of Daniel Shays. A member of the convention, possibly Gorham, writing to Madison, while the matter was under discussion, said that in addition to "the honest doubting people," there were three classes of men opposed to the Constitution. These three classes were the adherents of "paper money and tender laws," . . . "the late insurgents and their abettors," and "a great majority of the members from the province of Maine." It is this unknown writer who stated that the convention contained "eighteen or twenty who were actually in Shays's army." This letter was written on the 27th of January, and the writer declared: "I am pretty well satisfied we shall lose the question, unless we can take off some of the Opposition by amendments."

Most of the ability was on the Federalist side, but the majority of the votes were on the side of the opposition. Among the defenders of the Constitution were Gorham, King, and Strong, who had sat in the Philadelphia Convention, James Bowdoin, the energetic ex-governor of the State, Generals Heath and Lincoln, of Revolutionary fame, Sedgwick, Theophilus Parsons, Fisher Ames, and others just coming into prominence, besides a majority of the twenty-four clergymen, and scores of others. This array of ability was opposed in the debates by Widgery, Thompson, and Nasson, of the province of Maine, and by Taylor and Bishop, of Massachusetts. These men have no other claim to fame. They are now seen only in the reflected light of their able adversaries. In addition to these, Samuel Adams was silently opposed at the outset to the new Constitution. He had studied the document carefully and had read many of the current discussions. He was silent and inscrutable as the Sphinx, yet his opposition was suspected and effective. Adams had done his great work. He was the "Father of the Revolution," but could never be the "Father of the Constitution." His influence in the State of Massachusetts

was undoubtedly less than it formerly was, but it was still considerable. He took no part in the opening debates. He was probably open to conviction. At any rate, he could never hope to cope in debate with such men as Fisher Ames, King, Gorham, Dana, Bowdoin, Sumner, and others, who were on the opposite side. Nathan Dane, who had shown his hostility to the Constitution in Congress, was defeated for election to the convention, and Elbridge Gerry, who refused to sign, was apparently not a candidate. He was invited to come into the convention, however, in order to answer questions, but his presence soon became obnoxious because he volunteered too much information, and his stay was not prolonged.

The debate began upon the Constitution, clause by clause. The usual objections, and some very unusual ones, were urged. The two years' term for the representative was considered too long. It was unsafe to allow Congress exclusive jurisdiction over an area ten miles square. One member would agree to one mile, but never to ten. The standing army was objected to and the militia declared to be sufficient. In short, there was tyranny lurking in every clause. The patriotic ire of Mr. Nasson, of Maine, had risen to a white heat. "Sir," said he, "had I a voice like Jove, I would proclaim it throughout the world; and had I an arm like Jove, I would hurl from the globe those villains that would dare attempt to establish in our country a standing army." He held up Cæsar, the Rubicon, and Great Britain in scorn before the convention and trampled upon the necks of tyrants generally. He prayed to the God of liberty, and in his imagination saw another race of illustrious patriots springing phoenix-like from the ashes of the Revolutionary heroes. He begged the honorable body to permit him to make a short apostrophe to liberty. He was permitted, and here is the apostrophe. "O liberty! thou greatest good! thou fairest property! with thee I wish to live—with thee I wish to die! Pardon me if I drop a tear on the peril to which she is exposed; I cannot, sir, see this

brightest of jewels tarnished—a jewel worth ten thousand worlds; and shall we part with it so soon?”

Liberty seemed safe for the time, and other matters were discussed. It was held that the new Constitution did not recognize God, and there were no religious tests for office. The farmers were very solicitous about these matters, but the preachers were more broad-minded. Mr. Singletary was very much disturbed because under the new Constitution a Papist or an Infidel would be as eligible to office as a Christian! This remark drew the fire of the clergy. The Rev. Mr. Shute made an exceedingly logical, dignified, and broad-minded speech against a religious test. The sentiments that he uttered were far in advance of his time. “Far from limiting my charity and confidence,” he said, “to men of my own denomination in religion, I suppose, and I believe, sir, that there are worthy characters among men of every denomination—among the Quakers, the Baptists, the Church of England, the Papists; and even among those who have no other guide, in the way to virtue and heaven, than the dictates of natural religion. . . . The apostle Peter tells us that God is no respecter of persons, but, in every nation, he that feareth him, and worketh righteousness, is *acceptable* to him. And I know of no reason why men of such a character, in a community of whatever denomination in religion, *cæteris paribus*, with other suitable qualifications, should not be *acceptable* to the people, and why they may not be employed by them with safety and advantage in the important offices of government.” The Rev. Mr. Payson spoke in the same strain, and the Rev. Mr. Backus took a similar view.

Objection was made to the placing in the hands of Congress the regulation of the time and manner of holding elections. This was nothing less than a short cut to tyranny. It was urged, too, that the payment of the members of Congress out of the national treasury would make them too independent of their constituents. The compromise on the slave trade was an iniquitous bargain, and the whole





James Madison's diploma. From the original in the Library of Congress, Washington.

scheme was entirely too expensive. Jealousy of federal officials was strong in some minds. General Thompson took the Rev. Mr. West to task for intimating that the officers of the general government might be "good men." He could not conceive such a thing to be possible, and besides a clergyman was entirely out of order in attributing such traits to any persons. The doctrine of total depravity was much preferable. As for himself, he believed that mankind was "reprobate and deceitful" and was growing "worse and worse day after day." He could prove it, too, and that from the Old Testament, and might do so before he sat down.

Some others had more faith in human nature and would put some confidence in our future rulers, but Abraham White was not one of these. He was jealous of rulers generally, and "would not trust a 'flock of Moseses.'" He was confident of the soundness of his opinions and would give Mr. Parsons ten guineas if he could refute them. Mr. Singletary also had a jealous streak in his nature. He hated the Constitution because of the friends which it had made, and feared the oppression of a future Congress. "These lawyers and men of learning, and moneyed men," he said, "that talk so finely, and gloss over matters so smoothly, to make us poor, illiterate people swallow down the pill, expect to get into Congress themselves; they expect to be the managers of this Constitution, and get all the power and all the money into their own hands, and then they will swallow up all us little folks, like the great *Leviathan*, Mr. President; yes, just as the whale swallowed up *Jonah*." He not only said this, but threatened to say more on a future occasion.

The next speaker was Jonathan Smith, another farmer, but a man of very different type. Mr. Smith, in his plain, blunt way, made what was probably the most effective speech of the entire convention. All the eloquence of Patrick Henry and Fisher Ames could not compare with it in telling effect. "I am a plain man," he said, "and get my living

by the plough. I am not used to speak in public, but I beg your leave to say a few words to my fellow ploughjoggers in this house. I have lived in a part of the country where I have known the worth of good government by the want of it." He then proceeded to describe the turbulent scenes which had recently been enacted in the western part of the State. Some of the members of the late army of Daniel Shays were evidently rather sensitive on this subject, and Mr. Smith was interrupted and called to order. Mr. Kingsley wanted to know what the history of last winter had to do with the Constitution anyway, but Samuel Adams and others came to the rescue and insisted that Mr. Smith be allowed to "go on in his own way." He then continued: "I am going, Mr. President, to show you, my brother farmers, what were the effects of anarchy, that you may see the reasons why I wish for good government. People, I say, took up arms; and then, if you went to speak to them, you had the musket of death presented to your breast. They would rob you of your property; threaten to burn your houses; oblige you to be on your guard night and day; alarms spread from town to town; families were broken up; the tender mother would cry, 'O, my son is among them! What shall I do for my child!' Some were taken captive, children taken out of their schools, and carried away. Then we should hear of an action, and the poor prisoners were set in the front, to be killed by their own friends. How dreadful, how distressing was this! Our distress was so great that we should have been glad to snatch at anything that looked like a government. Had any person, that was able to protect us, come and set up his standard, we should all have flocked to it, even if it had been a monarch. . . .

"Now, Mr. President, when I saw this Constitution, I found that it was a cure for these disorders. It was just such a thing as we wanted. I got a copy of it and read it over and over. I had been a member of the Convention to form our own State constitution, and had learnt something of the checks and balances of power, and I found them all

here. I did not go to any lawyer, to ask his opinion; we have no lawyer in our town, and we do well enough without. I formed my own opinion, and was pleased with this Constitution. My honorable old daddy there (pointing to Mr. Singletary) won't think that I expect to be a Congressman, and swallow up the liberties of the people. I never had any post, nor do I want one. But I don't think the worse of the Constitution because lawyers, and men of learning, and moneyed men, are fond of it. I don't suspect that they want to get into Congress and abuse their power. I am not of such a jealous make. They that are honest men themselves are not apt to suspect other people. I don't know why our constituents have not a good right to be as jealous of us as we seem to be of Congress; and I think those gentlemen, who are so very suspicious that as soon as a man gets into power he turns rogue, had better look at home. . . . Some gentlemen think that our liberty and property are not safe in the hands of moneyed men, and men of learning. I am not of that mind.

"Brother farmers, let us suppose a case, now: Suppose you had a farm of fifty acres, and your title was disputed, and there was a farm of five thousand acres joined to you, that belonged to a man of learning, and his title was involved in the same difficulty; would you not be glad to have him for your friend, rather than to stand alone in the dispute? Well, the case is the same. These lawyers, these moneyed men, these men of learning, are all embarked in the same cause with us, and we must all swim or sink together; and shall we throw the Constitution overboard because it does not please us alike? Suppose two or three of you had been at the pains to break up a piece of rough land, and sow it with wheat; would you let it lie waste because you could not agree what sort of a fence to make? Would it not be better to put up a fence that did not please every one's fancy, rather than not fence it at all, or keep disputing about it until the wild beasts came in and devoured it? Some gentlemen say, Don't be in a hurry; take time to consider,



and don't take a leap in the dark. I say, Take things in time; gather fruit when it is ripe. There is a time to sow and a time to reap; we sowed our seed when we sent men to the federal convention; now is the harvest, now is the time to reap the fruit of our labor; and if we won't do it now, I am afraid we never shall have another opportunity." These simple, homely phrases of the farmer from the Berkshire Hills should live as long as the Constitution endures.

The Federalists had the better of the debates from the start, but did not seem to be gaining any votes. On several occasions the anti-Federalists attempted to bring the matter to a close. Confident of their strength, Mr. Nasson moved, on January 24th, that the convention reconsider its determination to discuss the Constitution clause by clause, and throw the whole matter open to debate. Samuel Adams, who had remained silent up to this time, opposed the motion. He said that he had his "difficulties and doubts" regarding some parts of the proposed Constitution and wished for the fullest possible discussion. His view prevailed and the motion was lost. On another occasion, Mr. Thompson wanted to adjourn "to see what our sister States will do," but the suggestion met with little favor.

It became evident to the friends of the Constitution, in the latter part of January, that they would not be able to secure its ratification without suggesting a series of amendments. They felt that in the simple proposition of ratification there was a majority against them, but they were inclined to think that the amendments would convert enough "honest doubters" to give them the desired majority. In this they were not deceived. Governor John Hancock, chairman of the convention, was selected as the proper man to propose the compromise. He was a man of a great deal of influence, and his attitude toward the Constitution was a matter of doubt. In submitting the document to the legislature, he had used ambiguous language, and in other ways had refused to take a stand one way or the other. Up to January 30th he had not appeared in the convention. Gout

was the alleged cause of his absence. His sincerity in the matter has been questioned. John Adams had remarked some time before that Hancock was invariably afflicted with this convenient and aristocratic malady whenever there was an unpopular or an unpleasant duty to perform. A short time before this, Rufus King had written that Hancock's health would permit of his presence in the convention "as soon as the majority is exhibited on either side." Hancock's contemporaries were rather severe in their strictures upon the indecision of his character. He does, in fact, seem strangely out of place in the midst of the Puritan austerity of his time. The gold braid, fine laces, and silver spangles of his gorgeous raiment do not harmonize with the sombreness of his surroundings. He has undoubtedly been misrepresented in many instances, but in this case he seems not to have acted from disinterested motives. The stand which he took in the convention in favor of the ratification of the Constitution and of the suggestion of amendments was the result of a political bargain, whereby he was to receive the assistance of ex-Governor Bowdoin's friends in furthering his political ambitions. These ambitions, too, were not humble. He wished to be continued as governor, had a longing for the vice-presidency, and even aspired to the presidency. However this may be, Governor Hancock appeared in the convention on January 30th for the first time, when the session was three-fourths spent, and suggested on the following day that in connection with the ratification of the Constitution certain amendments be recommended, the adoption of which would remove the objections on the part of many of the members. Samuel Adams was the first to speak. His attitude was pivotal. He endorsed the "conciliatory proposition" of Governor Hancock, and urged that it be duly considered. The proposition submitted by Hancock was prepared by Parsons, King, and Sedgwick, and was consequently endorsed by Bowdoin and other Federalist leaders. The most violent of the anti-Federalists looked askance at the proposal.

The amendments which were suggested suited them exactly, but there was no assurance that they would be adopted. With the moderates and "honest doubters," however, the amendments fully met the expectations of their Federalist authors. They converted Charles Turner, the ablest, though not the most conspicuous, of the anti-Federalists. Other conversions followed the submission of the proposition, and the fears of the anti-Federalists were aroused to such an extent that they moved on February 5th to adjourn. The motion was debated nearly all day and lost by a large majority. The convention was drawing to a close, and the opponents of the Constitution were driven to the last ditch. In the meantime, they had left no stone unturned. A most vigorous campaign was carried out. Outside influence was brought to bear. Richard Henry Lee, who called the framers of the Constitution "visionary young men," was doing his utmost to defeat the new form of government. He wrote to Elbridge Gerry, urging that Massachusetts should not ratify the Constitution unconditionally. He would make its ratification conditional upon the adoption of certain amendments, and advocated a second general convention to pass upon these. Such a step would have been fatal, as Madison pointed out to Hamilton at a later time, and as Washington also clearly showed in a letter to Charles Carter of December 14, 1787. "If another Federal Convention is attempted," he wrote, "the sentiment of the members will be more discordant or less conciliatory than the last— . . . they will agree upon no general plan." John Fiske says that when the Constitution was hanging in the balance in Massachusetts, Washington "threw himself into the breach" and by means of the above letter "set in motion a train of events which soon solved the difficulty." Washington is clearly entitled to no such credit. The truth is that the above letter was a private one, written nearly a month before the Massachusetts convention met and with no thought whatever of influencing opinion in that State. Instead of throwing himself into the

breach, Washington sharply reprimanded Mr. Carter for allowing the above paragraph to get into the papers. Certain parts of the letter were published and did exert a great influence, but Washington was seriously put out that such use should be made of a private letter written in a hasty way.

The opponents of the Constitution were doing their utmost in the debates, but the contest was an unequal one. William Widgery was crossing swords with Fisher Ames and other men infinitely his superior. Samuel Thompson, an intolerant man with a shady record in the Revolution, was as active in debate. He was described as a "furious haranguer," and a diary of the time speaks of his "Boreas' blasts." By his side was Samuel Nasson, an uneducated saddler and storekeeper, whose bombast we have already sampled. David Sewall, his neighbor, tells us that his town had voted at first not to send a delegate to the Convention, but Nasson "come down full charged with Gass and Stirred up a 2nd meeting and procured himself Elected, and I presume will go up charged like a Balloon." These three men from Maine employed their "Boreas' blasts" and apostrophes to liberty in an endeavor to prevent the ratification of the new Constitution, largely because their section was anxious to become independent, and the new form of government would bind it still more closely to Massachusetts. Dr. John Taylor, of Worcester County, was ranged on the same side. In fact, he was the most prominent man of the opposition. He had served in the legislature of the State, but was not well known. Jeremy Belknap tells us that he was "cunning and loquacious, but more decent" than his colleagues from Maine. Side by side with Dr. Taylor was Captain Bishop, but why "Captain" nobody seems to know. He is spoken of by Belknap as a "noted insurgent," and his military title may have been conferred upon him by Daniel Shays, with whom he seems to have had much in common. "In him," Professor Harding remarks in his excellent monograph, "the Rhode Island virus may be seen at work." All these influences, however, could not compass

the defeat of the Constitution. One by one the "honest doubters" were converted and the moderates placated by the suggested amendments, until a majority was obtained for the Constitution six days after the submission of the "conciliatory proposition" by John Hancock. The question was put to vote on the 6th of February, 1788, and the Constitution was ratified unconditionally, but nine amendments were recommended to "remove the fears and quiet the apprehensions of many of the good people of the commonwealth." The vote was close: yeas, one hundred and eighty-seven; nays, one hundred and sixty-eight. Even with this narrow margin, however, the minority submitted, for the most part, with good grace. After the vote was announced, Widgery, Taylor, Nasson, and others who had been in opposition, declared that they had been fairly beaten and would abide by the verdict of the majority and advise their constituents to do the same.

The ratification was celebrated in Boston on the 17th of February. Five thousand men were in the procession which bore the ship *Federal Constitution*, and a banquet was held on the following day at which toasts to all the ratifying States were drunk. A good work was thus concluded, although the conclusion was gall and wormwood to Richard Henry Lee in Virginia and to Governor Clinton in New York.

Maryland was the next State to ratify, and it did its work with promptness. The convention met at Annapolis on the 21st of April, and a week later the Constitution was ratified by a vote of sixty-three to eleven. The arguments of Luther Martin and Samuel Chase had availed nothing. The ratification was unconditional, and amendments were not even suggested. In fact, the convention would not listen to the mere reading of amendments when an attempt was made to submit them. Mr. Paca made the attempt, but delegates representing a large number of counties arose in order and said that they had been instructed to ratify the Constitution as speedily as possible, and "to do no other act."

They added further that they did not consider themselves authorized to consider amendments at all. The amendments were not read. The few anti-Federalists in the convention presented elaborate arguments against the Constitution and demanded that they be answered. The majority, however, confident in the strength of their numbers, were there to vote and did not care to talk. They voted; and Baltimore celebrated the ratification of the Constitution with the usual procession and banquet.

Seven States had now ratified the Constitution, and not one had rejected it. The only setback that the Constitution had received thus far was in New Hampshire. The convention of that State had assembled in February and had adjourned until June to await the action of the other States. The prompt and decisive action of Maryland, however, did much to neutralize the effect of the New Hampshire adjournment.

South Carolina was the next State to act. The opposition to the Constitution in this State was marked but not violent. The people seemed fairly well satisfied with the adjustment of the slavery question which Mr. Rutledge and the two Pinckneys had succeeded in making. The convention experienced no particular difficulty in ratifying, but there had been an animated and acrid discussion in the legislature when the new Constitution was submitted to it on the 16th of January. Instead of immediately submitting the document to the convention for ratification or rejection, the opponents of the Constitution, particularly Mr. Lowndes, insisted upon debating the question as if the legislature were the properly constituted body to pass upon it. The proceedings were opened by Mr. Charles Pinckney, with an elaborate speech, in the course of which he defended the Constitution. He expressed his "conviction that the firm establishment of the present system is better calculated to answer the great ends of public happiness than any that has yet been devised." The Constitution was also expounded and defended by John Rutledge, Major Butler,

and General Pinckney, all of whom had been members of the Philadelphia Convention. The last-named speaker was particularly able and effective in the debate. Objectors were not lacking, however. Mr. Rawlins Lowndes was opposed to the granting of so much power to a president who was not "likely ever to be chosen from South Carolina or Georgia." He was suspicious of the new Constitution and apparently well satisfied with the Articles of Confederation. "Let us not, therefore," he said, "receive this proffered system with implicit confidence, as carrying with it the stamp of superior perfection; rather let us compare what we already possess with what we are offered for it. We are now under the government of a most excellent Constitution, one that had stood the test of time, and carried us through difficulties generally supposed to be insurmountable; one that had raised us high in the eyes of all nations, and given to us the enviable blessings of liberty and independence; a constitution sent like a blessing from Heaven; yet we are impatient to change it for another, that vested power in a few men to pull down that fabric, which we had raised at the expense of our blood." This new form of government, he continued, had been called an experiment; he had no expectation that such an experiment would succeed, and "he sincerely believed that, when this new Constitution should be adopted, the sun of the Southern States would set, never to rise again." The moderate and reasonable men of the State were satisfied that they had been permitted to continue the slave trade for twenty years more, but this arrangement was not satisfactory to Lowndes. "In the first place," he said, "what cause was there for jealousy of our importing negroes? Why confine us to twenty years, or rather why limit us at all? For his part, he thought this trade could be justified in the principles of religion, humanity, and justice; for certainly to translate a set of human beings from a bad country to a better was fulfilling every part of these principles. But they don't like our slaves, because they have none themselves, and therefore want to exclude us

from this great advantage. Why should the Southern States allow of this, without the consent of nine States? . . . Without negroes, this State would degenerate into one of the most contemptible in the Union; and he cited an expression that fell from General Pinckney, in a former debate, that whilst there remained one acre of swamp land in South Carolina, he should raise his voice against restricting the importation of negroes."

Here, then, was a new idea. It was not strange that any South Carolina man should defend the institution of slavery or advocate the continuance of the slave trade; but here was a man who was actually eulogizing the Articles of Confederation as a form of government. The old, worm-eaten hulk had not only been declared seaworthy, but she had been solemnly pronounced to be staunch and trim. She had weathered the storms of the Revolution, and her sails were now set for a glorious course. She had been tried and not found wanting. The members of the legislature stood aghast. It is little wonder that this unlooked for panegyric quite took their breath away. It was a new tack. The reply came from Mr. Edward Rutledge. He began by expressing his surprise at hearing "such eulogium on the old Confederation," and then proceeded to show its shortcomings. It was not a difficult task. It was easy for him to show that a government without a ship, a soldier, or a shilling, was not worthy of the name; and his prediction did not seem to be improbable when he declared that "unless it was materially altered, the sun of American independence would indeed soon set—never to rise again." Mr. Lowndes certainly must now be set down as a heterodoxical statesman. He had opposed the Constitution and the Declaration of Independence and had eulogized the Articles of Confederation. He unintentionally complimented his constituents by saying that their opinions did not coincide with his own. When taken to task for occupying so much time in discussing a matter which was to be passed upon by another body, he excused



himself on the ground that he was confident that his constituents would not elect him to the convention, and hence he would have no other opportunity than the present one to ventilate his views. The debate continued for four days with Mr. Lowndes very much in evidence and eulogizing the Confederation and paper money and everything else that had been discredited. The strongest and most effective champion of the Constitution was General Charles Cotesworth Pinckney; and with the able assistance of Charles Pinckney, the Rutledges, and Major Butler, he succeeded in defeating the loquacious Mr. Lowndes by a narrow margin. When the question was put to call the convention for the 12th of May, it was passed by a vote of seventy-six to seventy-five. It was soon evident, however, that the opposition to the Constitution was stronger in the legislature than among the people.

The scene now changes from the halls of the legislature to those of the convention. The latter began its labors on the 13th of May, and continued in session for ten days. On the second day of the convention, Mr. Charles Pinckney made an elaborate speech, abounding in generalities, in which he advocated the ratification of the Constitution. There was some opposition, but it was not insuperable. The hideous form of Tyranny was again detected lurking between the lines of the new Constitution. "My constituents are highly alarmed," said Mr. Patrick Dollard, "at the large and rapid strides which this new government has taken towards despotism. They say it is big with political mischiefs, and pregnant with a greater variety of impending woes to the good people of the Southern States, especially South Carolina, than all the plagues supposed to issue from the poisonous box of Pandora. They say it is particularly calculated for the meridian of despotic aristocracy; that it evidently tends to promote the ambitious views of a few able and designing men, and enslave the rest. . . . They say they will resist against it; that they will not accept of it unless compelled by force of arms, which this

new Constitution plainly threatens; and then, they say, your standing army, like Turkish Janizaries enforcing despotic laws, must ram it down their throats with the points of bayonets . . . I shall never betray the trust reposed in me by them; therefore, shall give my hearty dissent." The familiar objections were raised and answered; the customary motion to adjourn was made and lost. Some of the members would have been glad to postpone action in order to see what attitude Virginia and New Hampshire were to assume; but the majority decreed otherwise, and ratified the Constitution on the 23d of May by a vote of one hundred and forty-nine to seventy-three. Four days later, in the city of Charleston, the usual celebration was held, the principal feature of which was the ship *Federalist* drawn by eight white horses.

Matters were now rapidly approaching a climax. Eight States had ratified, and three conventions were called to assemble within a month. It was now the latter part of May, 1788, and the Virginia convention was called for the 2d of June; the New York convention, for the 17th; and the adjourned New Hampshire convention, for the 18th.

The first New Hampshire convention had met at Exeter on the 13th of February, 1788. It was evident that the anti-Federalists were in the majority. As in Massachusetts, the Federalists had the ability and their opponents the votes. The leaders on the Federalist side were Governor John Sullivan, Judge Samuel Livermore, John Taylor Gilman, and John Langdon. Joshua Atherton was the leader of the opposition, and, in fact, the only really strong man in the anti-Federalist camp. The arguments of the opposition have a familiar sound. Atherton declared that the adoption of the Constitution would be "tyranny in the extreme, and despotism with a vengeance." Atherton was making no headway, while the Federalists were gaining converts. Many of these converts were of no use, however, because the instructions of their constituents, in many cases, prevented them from casting their votes in favor of the Constitution.

In this dilemma, after the convention had been in session a week, John Langdon moved to adjourn. The motion was carried by a vote of fifty-six to fifty-one, and the convention adjourned to meet at Concord on the 18th of the following June.

When the convention met at Concord, according to call, it was watched by many anxious eyes. Everyone knew that there would be a fierce contest in Virginia, and a battle royal in New York, and the Federalists did not have very high expectations in either State. New Hampshire could decide the whole matter quickly, if it would. The state of public feeling was intense. Hamilton was alive to the importance of the situation, was watching every move, and determined to make the most of every circumstance. If New Hampshire or Virginia should ratify in advance of New York, the success of the Constitution would be assured, and Governor Clinton and his party would receive a stinging blow. Hamilton's eyes were riveted upon Concord and Richmond. He wished the news from these centres to reach him with all possible speed, and to that end had contrived a system of horse expresses to carry the precious intelligence. As we shall see later, his vigilance was rewarded and his foresight resulted in good.

The records of the convention are very meagre and unsatisfactory, but it is evident that the same men were prominent who led in the Exeter meeting. Joshua Atherton was again the leader of the anti-Federalists, and among the Federalists we find John Langdon, now governor of the State, an experienced man, and a man of oratorical ability; John Sullivan, the predecessor of Langdon in the gubernatorial chair; and Judge Livermore, "able, acute, calm, and sagacious." During the last few days of the convention, when matters were approaching a crisis, the burden of Federal leadership fell upon Judge Livermore. He did his work well. Atherton was opposed to an unconditional ratification. He would consent to ratification only with amendments. Seeing that the tide of opinion was

setting in against him, he made an effort on the 21st of June to procure an adjournment. He failed in this, and on the same day the motion for ratification was passed by a vote of fifty-seven to forty-seven. Following the example of Massachusetts, the convention recommended the adoption of twelve amendments, which were set forth in the articles of ratification. The acceptance of the Constitution, however, was in no way conditioned upon the adoption of the amendments.

The papers of the time contain elaborate accounts of the great celebration which took place at Portsmouth a few days later. One of the songs sung on the occasion contains the following stanza:

“ 'Tis done, the glorious fabric's reared!  
Still be New Hampshire's sons revered!  
Who fixed its base in blood and scars  
And stretched its turrets to the stars.”

Mr. Joseph B. Walker, in his *New Hampshire's Federal Convention*, speaks repeatedly of the honor which is due to New Hampshire because it was the ninth State to ratify the Constitution. He thinks it extremely fortunate that the Exeter convention adjourned without ratifying, because had it not done so New Hampshire would not have had the peculiar distinction of being the ninth State. Mr. Walker clearly claims too much. There is not much glory for New Hampshire in being the ninth State under the circumstances. It would have been far more creditable to it had the Exeter convention ratified without adjournment. This adjournment was, in fact, the first setback that the Constitution received, and was a sweet morsel to the anti-Federalists. Under the circumstances, too, Virginia is entitled to some credit for its timely action. It is a well-established fact that Virginia knew nothing of the action of New Hampshire when it voted to ratify on the 25th of June.

The requisite nine States had now ratified, and the new form would go into effect with or without the remaining

four. The express rider brought the glad tidings of the New Hampshire ratification to Hamilton on the 24th of June, and on the same day a messenger was despatched by him to carry the news to Madison at Richmond. As the courier passed through New York and Philadelphia, he disclosed his precious message, and the news at once appeared in the papers. When he reached Richmond he found that Virginia had already ratified the Constitution without knowing of the action of New Hampshire. The members of the Virginia convention supposed that their State was the ninth to ratify and were surprised to find that they had been beaten by four days by New Hampshire.

There had been much opposition to the new Constitution in Virginia, and there was some talk of a separate Southern Confederacy. Patrick Henry was accused, but probably without good reason, of advocating such a scheme. Madison remarked in a letter to Jefferson, written April 22, 1788, that "Mr. Henry is supposed to aim at disunion," but subsequent events do not seem to verify the conjecture. However this may be, it is certain that the ratification by Georgia and South Carolina made the realization of such a confederacy impossible.

The campaign in Virginia had commenced with the publication of the Constitution. Richard Henry Lee began a series of letters from "Federal Farmer" early in October, by which he sought to prevent the ratification. Patrick Henry was eloquent and uncompromising in his opposition, and Madison wrote to Jefferson in April that Colonel Mason was becoming "more bitter and outrageous," and might eventually land with Henry. Randolph is described in the same letter as being "temperate in his opposition," but he finally voted for ratification. The question was thus no new one when the convention met, as it did on the 2d of June. All the best talent of the State was there with the exception of Washington, Jefferson, and Richard Henry Lee. Patrick Henry was the leader in the debate on the anti-Federalist side, and he was ably assisted by Benjamin Harrison, John



Edmund Randolph. *From the original painting in the State Library,  
Richmond, Virginia.*



Tyler, and James Monroe, the future President of the United States. Madison was the leader on the opposite side, and never were two men of more opposite characteristics opposed to each other in debate. Henry was bold, confident, impulsive, and fiery, while Madison was retiring, yet calm, cool, and collected. Madison, ably assisted by Harry Lee, and by John Marshall, who still had his spurs to win, either crushed or conciliated the opposition. Patrick Henry spoke repeatedly, and on one occasion held the floor for seven consecutive hours, making use of repartee, invective, and sarcasm, but all to no avail. He was as forceful and as eloquent as ever, but the logic of events and of Madison was against him. He saw the liberties of the people in danger; he demanded a bill of rights; he could not tolerate any strong government outside of his own State; he wanted a league of the States instead of a government based on individuals. Why change from "We, the States" to "We, the People"? He made use of an opinion by Jefferson in a way that was hardly fair; and the Federalists were in continual dread of a stampede as the result of his fiery eloquence. It did not come, however, and the Constitution was ratified on the 25th of June by a vote of eighty-nine to seventy-nine. The majority was not large, and a list of amendments was proposed.

Hamilton was still fighting his unequal battle at Poughkeepsie. The convention met on the 17th of June, and Clinton was the recognized leader of the anti-Federalists. At the outset, he had a large majority of the delegates at his back; and had an early vote been taken, the fate of the Constitution would undoubtedly have been sealed. Delay was the only hope of the Federalists. The debate dragged out its tedious length, and Hamilton, John Jay, R. R. Livingston, and James Duane were making perceptible inroads upon the anti-Federalists. The cheering intelligence from Concord and Richmond had had its influence, but it was by no means conclusive, and the contest was destined to be prolonged more than a month. On the 27th of June, Hamilton wrote



to Madison that he could detect "some slight symptoms of relaxation" on the part of the opponents of the Constitution. The symptoms were slight, however, and the contest still remained a strenuous one. Objections were made and answered in the usual way. It would be tedious and unprofitable for us to review these arguments in detail at this time. Governor Clinton was sure that the Constitution would "destroy the liberties of the people." In spite of the vigorous efforts of Hamilton and his colleagues there was grave danger in July that the Constitution would be rejected. A conditional ratification was proposed. It was suggested that the convention recommend the adoption of certain amendments, and then enter the Union, to go out again after five or six years in case the amendments were not adopted by that time. Hamilton saw the folly of the scheme, but asked the opinion of Madison. Madison wisely decided that the ratification should be unconditional, absolute, and forever. His idea prevailed and the Constitution was unconditionally ratified on the 26th of July, by a vote of thirty to twenty-seven. The friends of the Union now breathed easier. Its success was made doubly sure. The last indispensable State had been added to the list. North Carolina and Rhode Island might have remained on the outside if they wished, but New York could not have been allowed to divide the Nation into two parts by separating New England from the South. Indeed, the sword had been threatened in such an event. Happily, there was no reason for such a last resort.

The ratification by New York was celebrated by the usual procession, and the ship of State in this instance very appropriately bore the name of Hamilton.

The period of greatest anxiety had passed. Yet a unanimous ratification was greatly to be desired, and there was some interest in the action of North Carolina and Rhode Island. The convention in the former State assembled on the 21st of July, 1788. The opponents of the Constitution were in the majority, and an unconditional ratification

seemed out of the question. The acceptance of the new form by eleven States had apparently not much influence on North Carolina. The convention wanted the amendments adopted first, and the ratification to take place later. The convention adjourned early in August, but met later and ratified the Constitution on the 21st of November, 1789.

One State now remained out of the new Union. Rhode Island was nothing if not individual. This State was usually a discordant note, and in this instance was consistent by being again out of tune. When the Constitution was submitted, it declined to call a convention, as had been suggested in the resolutions of the Philadelphia Convention. It was roundly abused in all quarters, and the Federalist press suggested that its malcontents be driven with shovels and pickaxes into the sea. The opposition to the Constitution in Rhode Island was due to a variety of local causes, the complete history of which has never been written. Some of these have been referred to in a previous chapter. The matter must still be considered an open question. The orthodox view of the case is utterly unfavorable to the good sense of the people of the State, but this view is combated by numerous local writers. It must be confessed, however, that the arguments set forth on this subject in the proceedings of the Rhode Island Historical Society are by no means conclusive. They fail to redeem the fair name of the State. However this may be, Rhode Island, after remaining in isolation for more than a year after the inauguration of Washington, accepted the new Constitution on the 29th of May, 1790. The Union was now complete, and the vexed question as to the constitutional status of States remaining out of the Union was settled forever. All that was left for political theorists to do was to quibble over what might have been.



## CHAPTER VIII

### *THE ORIGINS OF THE CONSTITUTION*

A KNOWLEDGE of the sources from which the Constitution was derived is essential to a thorough understanding of that document. Sir Henry Maine has remarked that there is not originality enough in the human race to invent a code of laws. Anyone who has traced the development of political institutions knows this to be literally true. Although Mr. Gladstone said that "the American Constitution is the most wonderful work ever struck off at a given time, by the brain and purpose of man," no one knew better than he that it was the result of centuries of political development, and not the mere creature of spontaneous invention. The American Constitution did not originate in the memorable Philadelphia Convention of 1787, but was made up of Anglo-Saxon precedents, of governmental principles which had been tried and approved by English-speaking people on both sides of the Atlantic. In fact, all those great institutions which make modern civilization possible were developed by a slow evolutionary process whose genesis is to be sought in the remotest past. The law of evolution or growth is not confined to the science of biology, but obtains in the science of politics as well. It was in accordance with this inexorable law of political development that the members of the Constitutional Convention, recognizing the fact that reason and judgment are not infallible guides in constitution making, turned their attention to the pages of history and utilized the accumulated governmental experience

of the race. It is the object of this chapter to trace, in a general way, the immediate precedents for the Constitution to be found in the Articles of Confederation, the early State constitutions, the colonial charters, and other American documents, as well as the more remote precedents which were found in the governments of the Old World and of Great Britain in particular.

A federal government was no new thing in 1787. Various forms of confederations had existed at intervals almost from the beginning of history. The Greek leagues were the most conspicuous of these early attempts at federal government, and frequent mention of them is found in the discussions of the constitutional period. The scholarly members of the Federal Convention, such as Madison, Hamilton, and Wilson, frequently made mention of the Achaian, Lykian, and Ætolian leagues, and also of the Amphictyonic Council. They sought guidance from these experiments. The *Federalist*, in speaking of the Achaian League remarks: "Could its interior structure and regular operation be ascertained, it is probable that more light would be thrown by it on the science of Federal government, than by any of the like experiments with which we are acquainted." However, it cannot be said with truth that the Greek leagues were of great positive value as guides to the framers of the Constitution. It is evident from an inspection of the debates of the Convention and the *Federalist* that the makers of the Constitution considered that many of the features of Greek federal government should be avoided rather than copied. The governments of the Greek leagues were cited as negative rather than as positive precedents. They were, however, none the less useful for this reason. They enabled the men of 1787 to avoid many political quagmires into which the acute and subtle Greek, not guided by historical experience, had fallen. A few citations will show the truth of the above statement. Madison, in discussing the New Jersey Plan, remarked that it would not "secure the Union against the

influence of foreign powers over its members," and that it left the door open for "pernicious machinations" such as took place in the Amphictyonic Council and the Achaian League. He also said that the history of confederations showed that the tendency was for the "parts to encroach upon the authority of the whole." He again cited the history of the Greek leagues to substantiate his statement. In the course of an able argument in favor of having a bicameral national legislature, James Wilson said that it was not strange that the legislatures of previous confederations had only one house. "The Amphictyonic and Achaian," he continued, "were formed in the infancy of political science, and appear, by their history and fate, to have contained radical defects." Alexander Hamilton also pointed to certain features of the Amphictyonic Council which, in his opinion, should be avoided in the new Constitution. When Oliver Ellsworth, of Connecticut, urged that each State should have an equal representation in the Senate, on the ground that "no instance of a confederacy has existed in which an equality of voices has not been exercised by the members of it," James Madison called his attention to the fact that the cities comprising the Lykian League had a representation "proportioned to their importance;" yet Mr. Madison further added that he would place no great stress on that fact, since the "history and fate of the several confederacies, modern as well as ancient," exhibited "some radical vice in their structure." Some few features of these Greek governments were commended, however, and their acceptance urged; but the experience of Greece was mainly useful in pointing out governmental principles which had been tried and found wanting.

In the debates of the Convention and in the *Federalist*, frequent reference is also made to the constitutions of the German Confederation, the Swiss Cantons, the Italian Republics, and the United Netherlands. In short, the governments of all important confederacies, ancient and modern, were scrutinized in search for historical guidance.

Then, too, American experience was by no means neglected. The early State constitutions and the colonial charters were frequently drawn upon in the construction of the Federal Constitution.

A study of the sources of the Constitution naturally begins with a consideration of the preamble, "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." It will facilitate our study of the preamble to separate it into three parts: First, the authority, namely, "We the people," by which the Constitution was ordained and established; secondly, the six fundamental reasons for ordaining and establishing it; and thirdly, the title which the country was to bear under the new form of government.

The preamble begins with these inspiring words: "We the people of the United States"; "to me," says Lieber, "the most magnificent words I know of in all history; they seem like an entrance, full of grandeur and simplicity, into a wide temple. It is the whole nation that speaks in its entirety and power; and yet the word 'people,' in its personal sense, gives more life to it." We have here a bold assertion of the national as opposed to the purely federal idea, which had been tried and found wanting. The pages of history from ancient Greece to America are strewn with the wrecks of loose federalism. It is refreshing, then, to turn from the lifeless compact of States to the closer union in which the sovereign people "ordain" and "establish."

There is a marked similarity between the preamble of the Constitution and that of the first Massachusetts constitution, adopted in 1780. "*We*, therefore, the people of Massachusetts . . . forming a new Constitution of civil government for ourselves and posterity . . . do . . . ordain and establish the following . . . as the Constitution

of the Commonwealth of Massachusetts." Mr. Gorham, of Massachusetts, was a member of the committee appointed to draft a constitution for that State. He was also a member of the Committee of Detail appointed by the Convention of 1787 to prepare a preliminary draft of the federal Constitution. These facts may serve to account for the similarities of phraseology.

The language of the six fundamental principles forming the main body of the preamble is directly traceable to a resolution offered in the Constitutional Convention on May 28, 1787, by Edmund Randolph, of Virginia. It reads as follows: "Resolved, that the Articles of Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution; namely, 'common defense, security of liberty, and general welfare.'" In drafting this resolution, Mr. Randolph plainly had in mind Article III. of the Articles of Confederation, which declares that "the said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare . . . ." This article may in turn be traced to Franklin's plan of 1775, mentioned in a preceding chapter.

The title, "The United States of America," may have been suggested by the name of the United Netherlands or the United States of the Netherlands, to whose government the members of the Constitutional Convention repeatedly referred. The title was formally adopted by the adoption of the Articles of Confederation, appearing as it does for the first time officially in that document. Its use, however, dates back to the time of the Declaration of Independence, or even before. *The Pennsylvania Evening Post*, a Philadelphia paper, contained on June 29, 1776, a communication signed "Republicus," in which the name "The United States of America" was suggested. There is also a foreshadowing of the transformation of the name from "United Colonies" to "United States" in Richard Henry Lee's famous motion of June 7, 1776: "That these United Colonies are, and



of right ought to be, free and independent States . . .” The Declaration of Independence, which followed, transformed the colonies into States, and soon after a committee consisting of John Adams, Franklin, and Jefferson was appointed to prepare a device for a seal for “The United States of America.” On the 9th of September, 1776, the name “United States” was officially recognized. On that date it was resolved by Congress, “That in all continental commissions, and other instruments, where heretofore the words ‘United Colonies’ have been used, the style be altered, for the future, to the ‘United States.’”

The origin and content of the preamble are important, because, as Story remarks, “the preamble of a statute is a key to open the minds of the makers.” It is also important because of the use which nationalists have made of it. As Pomeroy remarks in his *Constitutional Law*, “it is the rock upon which many of the great champions of nationality among American statesmen have planted themselves in their conflicts with opposing schools, and from which they were never dislodged by the fiercest assaults of extreme or moderate partisans of State sovereignty.” A notable instance of the above is to be found in a speech delivered by Webster in the United States Senate on February 16, 1833, in reply to John C. Calhoun: “Finally, sir, how can any man get over the words of the Constitution itself? ‘*We the people of the United States do ordain and establish this Constitution.*’ These words must cease to be a part of the Constitution, they must be obliterated from the parchment upon which they are written, before any human ingenuity or human argument can remove the popular basis on which that Constitution rests, and turn the instrument into a mere compact between sovereign States.” This phase of the matter was undoubtedly not appreciated by the members of the Constitutional Convention, as the preamble was adopted without a dissenting voice. At a later time, when vital constitutional questions had arisen, the national idea in the preamble assumed a more positive form.

In studying the Constitution, we are met at the very outset by an explicit and concise statement of the bicameral principle. "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." It may now be regarded as an axiom of political science that legislative power should be vested in *two* rather than in one, three, or four houses. Experiments have been tried with legislatures thus variously constituted and the all but unanimous verdict has been in favor of a legislative body consisting of two houses. The fittest has survived. This fact is now generally admitted, although as Story remarks, the utility of the system is "sometimes disputed by men of speculative ingenuity, and recluse habits." In commenting upon the importance of the bicameral principle the same writer says: "It has been justly observed, that there is scarcely in the whole science of politics a more important maxim, and one which bears with greater influence upon the practical operations of the government."

The theoretical and practical arguments in favor of the bicameral principle are familiar, but it may not be amiss to review them in this connection. The history of the system both in Great Britain and America proves conclusively that it is a very effectual check upon hasty and ill-advised legislation. It frequently happens in legislative bodies that a vicious measure passes one house because it is not closely scrutinized by the members. "Log-rolling" or even more questionable methods may be resorted to. These errors may be corrected in the second branch. Again opportunity is afforded in the second branch for amending and correcting a faulty measure. Time is also given for a closer scrutiny of the measure by the people and public opinion is permitted to act through the medium of the press and otherwise. Again, the two houses in a bicameral legislature are usually organized upon different principles and consider legislation from different points of view. Those legislators having the longer term of office are usually not so sensitive

to public opinion. In opposition to the above it might be urged that the passage of a really meritorious measure is rendered difficult or even impossible in many cases by the bicameral principle. This is no doubt true in some instances, but we are suffering from too much rather than from too little legislation in both state and nation, and the disadvantage is not so great as it seems at first thought. The defeat of vicious and selfish measures is often a matter of more consequence than the enacting of meritorious laws. The brake is just as essential as the motive power. In the words of Pomeroy, "One house is the force which drives, the other the anchor which holds fast; one is the instrument of progress, the other tempers the vehemence of advance; one communicates speed, the other steadiness."

The bicameral principle has demonstrated its right to exist. It has become a fixture in political science. The unicameral system, its most formidable rival, has not withstood the test of practical experience. It was tried and found wanting in France, Spain, Naples, Portugal, and America. Spain and France also experimented with legislatures consisting of three houses, and Sweden in the middle ages tried one made up of four chambers. The result was a failure in each instance. Most competent critics will agree with Francis Lieber when he says, "Experience has proved to the English and Americans that to have a measure discussed entirely *de novo* by a different set of men, with equal powers, and combined upon a different basis" . . . has "a wonderful effect in sifting, moderating, discovering, and in enlightening the country."

Having noted the importance of the bicameral principle we next seek its origin and trace its development in America. This principle of the American Constitution, like so many others, is of English origin. The English Parliament had been divided into two houses for more than four hundred years at the time that the American Constitution was formulated. The immediate precedent for the bicameral system, however, is to be found in the legislatures of the various States.

In America the bicameral system is first found in Massachusetts. The charter of the Massachusetts Bay Colony provided for a General Court, to be composed of "assistants" and "deputies." For a time these two bodies, although elected by different processes, deliberated and voted as one body. Yet the charter contained the germ of the bicameral system, and the assistants and deputies soon came to look upon themselves as constituting two separate and distinct bodies. Their interests, too, seemed to conflict; and it soon became evident that a separation was inevitable. In 1634 the crisis came in the form of a test case. In the famous Newtown matter, a majority of the deputies voted in the affirmative, a majority of the assistants in the negative, and a majority of the entire court, if taken as a single body, in the affirmative. The deputies claimed that the resolution was carried, while the assistants held that it was lost. A deadlock ensued, and a day of fasting and prayer was decreed. The result of the whole matter was that in 1636 the General Court cleared up matters by passing the following resolution: "And whereas it may fall out that in some of those General Courts, to be holden by the magistrates—assistants—and deputies, there may arise some difference of judgment in doubtful cases, it is therefore ordered, that no law, order, or sentence shall pass as an act of the Court, without the consent of the greater part of the magistrates on the one part, and the greater part of the deputies on the other part." This resolution settled the immediate difficulty. It made the two bodies coördinate in legislative authority. Yet, while they voted separately, they continued to sit together until 1644. It is evident from the records, however, that the two bodies did not dwell together in harmony. Disputes were constantly arising, until finally the whole matter was settled as a result of the famous case of *Mrs. Sherman's pig*. The case in itself was insignificant, but it led to most important governmental consequences. As dignified old Governor Hutchinson put it, "the controversy between the two houses at this time

was occasioned by a difference in sentiment upon the identity of a swine which was claimed by a poor woman as having strayed from her some years before, and, her title being disputed by a person of more consequence, divided not the Court only, but the whole country." As an outcome of this controversy, the General Court resolved that the two bodies should sit apart, that bills might originate in either, and that a bill having passed one house should go to the other for approval or rejection. The reasons assigned by the General Court for the above resolution were that "divers inconveniences" resulted from the sitting together of the two bodies, and that it was considered the part of "wisdom to follow the laudable practice of other States who have laid ground-works for government and order." It is quite clear from the language of the records that the colonial legislators had the English government in mind in introducing the bicameral principle into the legislature of Massachusetts. Here, then, in 1644, we find the bicameral system introduced for the first time into American government. The germ of the system is to be sought at an earlier date, but it was not until 1644 that it was fully developed with the two houses or branches of the legislature sitting, deliberating, and voting separately.

The system was gradually introduced into the other colonies. In some of them the bicameral principle existed from the outset, while in others it was introduced on account of various causes. The result was that at the close of the Revolution the legislatures of all the States, except those of Pennsylvania and Georgia, consisted of two houses. The sentiment in Georgia was evidently in favor of two houses, although it had at the time a single-chambered legislature. The delegates from that State voted with the majority of the Convention upon the matter, and in 1789 the system, pure and simple, was introduced into its new constitution. It is highly probable, too, that Pennsylvania was in favor of the system in 1787, as we find it incorporated in its constitution of 1790.

Thus in 1790 the Federal and all the State legislatures were composed of two houses. It might also be interesting to note that the legislatures of all the later States were similarly constituted upon their admission, with the single exception of Vermont. When Vermont was admitted to the Union in 1791, it had a constitution modelled after that of Pennsylvania, which contained a single-chambered legislature. This fact was due to the influence of Dr. Thomas Young, an influential citizen of Philadelphia. The legislature of the State continued to consist of a single chamber until the bicameral principle was introduced by means of a constitutional amendment in 1836. From that date until the present, all the State legislatures have consisted of two houses; and when a State is admitted to the Union, it is provided with a bicameral legislature as a matter of course.

In conclusion, then, it should be noted that the causes which operated to separate the colonial legislatures into two branches were different in the different colonies, and that in most of them there was a gradual evolution of the system influenced either consciously or unconsciously by the English model. This English influence, no doubt, accelerated the appearance of the bicameral system. It was only six years after the founding of the Colony of Massachusetts Bay that the two branches of the legislature were declared coördinate, and after a lapse of fourteen years the two bodies were deliberating as well as voting separately.

Our survey of the subject leads us to conclude that the bicameral system in the Federal Constitution is, in its growth and development, essentially American, but that the bicameral principle, the germ and genesis of the institution, must be sought on foreign soil. That there should be a sentiment in the Convention of 1787 all but unanimous in its favor is not strange when we consider the abundant precedent therefor in the State constitutions, the colonial governments, and, more remotely, in the British government. In the gradual evolution of the system we should

naturally expect to find it a feature of the Articles of Confederation, and such doubtless would have been the case were it not for the influence of Franklin and the example of the Continental Congress.

The origin of the House of Representatives is quite similar to that of the bicameral system. It was derived from the lower house of the early State constitutions, and this in turn from the corresponding body under the colonial charters. It is true, no doubt, as has been repeatedly asserted, and as the debates seem to indicate, that the makers of the Constitution were influenced to some extent by the organization of foreign legislatures, and particularly by that of the British Parliament; but it is also true that the foundation and framework of the House of Representatives were derived directly from the early State constitutions and the colonial charters. In order to establish the truth of this general statement, it will be necessary to compare the essential features of the House of Representatives with the corresponding features of the lower house of the early State and colonial legislatures.

The Federal Constitution provides for the lower house as follows: "The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the State Legislature."

"No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen."

Comparing, then, the House of Representatives as thus constituted with the lower houses of the early State legislatures, we note a striking resemblance both in letter and in spirit. The lower branch of the first State legislatures was more numerous than the upper, was elected for a shorter term of office as a rule, and its general characteristics appear

to be essentially the same, whether the name be "House of Representatives," as in New Hampshire, Massachusetts, and South Carolina; or "Assembly," as in New York; or "House of Assembly," as in Delaware; or "General Assembly," as in New Jersey; or "House of Delegates," as in Maryland and Virginia; or "House of Commons," as in North Carolina.

The immediate precedents would indicate a term of one year for members of the House of Representatives, as this was the term of office prescribed by the Articles of Confederation, and by the early constitutions of all the States except that of South Carolina, which provided for a term of two years. There were good reasons, however, for the longer term. When the matter came up in the Federal Convention some favored a term of one year; some, two, and some, three years. In general, it may be said that the issue lay between a term of one year and one of longer duration. Some held that the liberties of the people depended on frequency of elections, while others contended that "stability" in our institutions could not be attained without a comparatively long term of office. Madison favored a term of three years. "Instability," he said, "is one of the great vices of our republics." He argued further that a term of three years was necessary to enable the representative to familiarize himself with the duties of his office. "One year," he continued, "will be almost consumed in preparing for, and travelling to and from, the seat of national business." Mr. Gerry took the opposite view. He asserted that the people of New England would never give up annual elections. "He considered annual elections as the only defense of the people against tyranny." Mr. Randolph moved for a term of two years. He said that he would prefer annual to biennial elections, but for the great area of the country. Hamilton, as might be expected, argued for a term of three years. This, he said, would give greater stability to the government, and he did not fear tyranny or usurpation as a result. "The British House of Commons,"



he remarked, "were elected septennially, yet the democratic spirit of the Constitution had not ceased." ' The result was that the term of two years was ultimately fixed upon as an average or compromise term. It became necessary at a later time for Hamilton to defend in the *Federalist* the two years' term and to combat the current observation, "that when annual elections end, tyranny begins." To those who argued that the term of office for the representative should be that usually given to members of the lower houses of the State legislatures, he replied that "the period of service ought . . . to bear some proportion to the extent of practical knowledge requisite to the due performance of the service;" and he contended that a term of two years bore no greater proportion to the knowledge requisite for federal legislation than did a term of one year to the knowledge necessary for State legislation.

The Constitution specifies that the representatives shall be chosen "by the people of the several States." This now seems a very natural mode of procedure, but the plan was not adopted in the Convention without considerable discussion. There was a conflict between the aristocratic and the democratic ideas. Some of the members of the Convention had little faith in the wisdom of the masses and would accord them but slight participation in the government; while others held that the new form would be based entirely on the people and that they should be given the largest possible participation. Mr. Sherman had little faith in the ability of the people, and Mr. Gerry also bewailed the "excess of Democracy." The people, he held, are not wanting in virtue, but "are the dupes of pretended patriots." Mr. Butler also considered popular elections "impracticable." The democratic idea was defended by Mr. Mason. He would make the House of Representatives "the grand depository of the democratic principles of the government." Mr. Wilson also championed popular elections. He would raise the "federal pyramid to a considerable altitude, and for that reason wished to give it as

broad a basis as possible." He maintained that "no government could long subsist without the confidence of the people," and that "in a republican government, this confidence was peculiarly essential." Mr. Madison argued for a plan similar to that which now exists—the election of representatives of the people and of senators by the legislatures of the States. The result was that the idea of popular elections was endorsed by the Convention by a vote all but unanimous. This was to be expected, as the conclusion was in harmony with colonial and English experience.

The early State constitutions in every case specify certain qualifications which persons must possess to entitle them to vote for members of the lower house, but this important and perplexing question is neatly and satisfactorily evaded in the Federal Constitution. The Convention, as we have stated, very wisely decided not to open the suffrage question, but to leave that matter to the various States for adjustment. The report of the Committee of Detail, presented to the Convention on August 6th, contained a provision substantially the same as that now in force in the Constitution. When the matter came up for discussion an attempt was made by Gouverneur Morris to amend the clause in such a way as to limit the suffrage to freeholders. After a vigorous discussion the project was defeated. This conclusion was in harmony with the precedents of the State constitutions, as only a small minority of them restricted to freeholders the right of voting for representatives; yet in nearly every case a property qualification of some kind was exacted.

The early State constitutions, as a rule, did not specify any minimum age for a member of the lower house; but the age of twenty-one is to be inferred in all cases, and is definitely specified in the constitutions of Maryland and Georgia. Some of the members of the Convention, however, were of the opinion that greater maturity of judgment was necessary for members of the national House of Representatives than for members of the State legislatures, and with this idea in mind Mr. Mason moved to insert

twenty-five years of age as a qualification for representatives. Mr. Wilson opposed the motion and contended that "there was no more reason for incapacitating *youth* than *age*, when the requisite qualifications were found." The conservative opinion prevailed, however, and the age qualification was adopted by a vote of seven to three. There was no precedent for this clause, either in the early State constitutions or in that of Great Britain.

The Constitution provides that a man must have been a citizen of the United States for seven years at the time of his election to the House of Representatives. Colonel Mason proposed this provision, and defended it on the ground that a man should be a citizen long enough to become familiar with American affairs before serving in Congress. There was abundant precedent in the early State constitutions for this citizenship requirement. The period of citizenship insisted upon is naturally much shorter. The constitutions of eight of the States provided that the representative in the lower house should be an inhabitant of the State, while those of the other three made no mention of any special qualifications for the representative. The term of citizenship required varied from one year in Massachusetts, North Carolina, and Georgia to three years in South Carolina. In addition to this citizenship of the State, a majority of the constitutions insisted that the representative should have been a resident for a specified time of the county, city, or town from which he was sent. The Federal Constitution does not specify that the representative shall be a resident of the district which he represents, but, as a matter of fact, he usually is. The people of a congressional district usually argue that they have men within the limits of the district with sufficient ability to represent them, and also that a resident of the district knows best the peculiar needs of that locality. There have been, however, some few exceptions to this rule in America, and the British practice is entirely contrary to it. The residence qualification in England was disregarded for a considerable time, and

was finally abolished by statute shortly before the Convention of 1787. Thus while the theory of the matter is the same in the two countries, the practice is quite different. The English plan produces the best results. It returns fewer men of poor ability. It may be true that local interests are better cared for under the American plan. The fact is, that local interests in the United States are entirely too well cared for by our members of Congress. Their time and energies are absorbed in procuring offices and pensions for their constituents, and public buildings and appropriations for rivers and harbors for their districts. The American representative is becoming too local and is losing his national character.

An attempt was made to insert a property qualification for representatives, but it was not approved. It is not surprising that such a proposition was made, as a property qualification was specified in the constitutions of several of the States. Seven of these constitutions made provision for such a qualification, while four did not. The general tendency among English-speaking peoples has been toward the removal of property restrictions from suffrage and office holding, and the refusal of the Convention to specify any such restriction was in harmony with this general tendency.

There was no question in regard to the introduction of the representative principle into the Constitution. This principle is a legacy of the Germanic peoples, and appears in practically all Germanic forms of government. In England, at a time long prior to the Norman Conquest, the township sent the reeve and four "discreet men" to represent it in the county assembly. To this humble beginning we may trace the history of that great governmental principle which has made possible the government of immense areas of territory from single capitals. The makers of the Constitution had witnessed its operation in the early State constitutions, the colonial charters, and the English government; and its use in 1787 was axiomatic in republican forms of government.

As soon as the Germanic community assumed considerable proportions, pure democracy became an impossibility, and the representative system was introduced. The colonies had felt the need of the expedient almost immediately after their arrival, and it appears in all the colonial governments at a comparatively early date. The first representative assembly in America was the Virginia House of Burgesses, which was organized, or, as Governor Hutchinson expressively puts it, "broke out," in 1619. It did literally "break out," as the representative principle cannot be restrained among Germanic peoples. From the founding of the colony until 1619 the people had had no participation in the lawmaking and were consequently far from satisfied. The result of their discontent was the establishment of the House of Burgesses, consisting of two members from each of the eleven plantations or corporations.

In like manner the representative principle appears logically and inevitably in each of the thirteen colonies. The circumstances attending its introduction differed somewhat in the various colonies, but the problem to be solved and the method of solution were uniform.

The Constitution provides that representatives shall be apportioned among the several States "according to their respective numbers." The introduction of proportional representation was a radical departure from the provision of the Articles of Confederation, whereby each State, large and small alike, was granted one vote. The method adopted, however, coincides with English governmental theory and has many precedents in the early State constitutions. The counties, towns, and cities were generally given a representation in the State legislature in proportion to the number of inhabitants which they contained. To be more specific, the constitutions of eight of the States provided for proportional representation in the lower house of the legislature for the various counties, towns, and electoral districts, while those of Pennsylvania, Delaware, and New Jersey assigned an equal representation to the various counties.

The Constitution of Massachusetts gave one representative to each town having one hundred and fifty "ratable polls," two for three hundred and seventy-five such polls, and one additional for every two hundred and twenty-five ratable polls thereafter. The New York Constitution, after allowing to the various counties a representation varying from two to ten, provided for the taking of a census every seven years, whereby the representation might be adjusted.

In the New England Confederation of 1643 each colony had two representatives. Equal representation obtained in many of the earlier forms of government, but the proportional method commended itself for fairness and equity and was adopted, first by the States and later by the nation. The system would no doubt have come into more general use at an earlier time if accurate censuses had been taken. The use of equal representation by the Continental Congress in 1774 seemed to necessitate an apology. The method of voting adopted by the Continental Congress was carried over into the Articles of Confederation, but was logically rejected in the construction of the more finished form of government in 1787.

The Constitution further provides that each State shall have at least one representative, regardless of population. A similar provision existed in the Constitution of Massachusetts of 1780. This constitution provided that "every corporate town containing one hundred and fifty ratable polls, may elect one representative," but "that each town now incorporated, not having one hundred and fifty ratable polls, may elect one representative." James Wilson called the attention of the Committee of Detail in the Constitutional Convention to this particular part of the Constitution of Massachusetts.

The Constitution also provided that each State should have a certain number of representatives, therein stipulated, until the number to which each was entitled could be accurately determined by a census. The method was not new. It was found in Franklin's "Albany Plan" of 1754, in

Hutchinson's "Plan" of the same year, and in Galloway's "Plan" of 1774.

The device of the New York Constitution is also similar to this plan. The method was a natural one for surmounting the difficulties arising from the absence of an accurate enumeration of the people.

As noted elsewhere, the three-fifths expedient was not original with the Philadelphia Convention. Congress had adopted that ratio several years before for the purpose of apportioning quotas of revenue among the States.

The Constitution provided that "where vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies." The method of filling vacancies is a matter of detail involving no important governmental principle and had not the lead of a long line of precedents. Several of the early State constitutions made no definite provision for the filling of vacancies. The Constitution of New Hampshire specified that vacancies should be filled "in the same manner as annual elections are made." The Constitutions of Delaware, Georgia, and North Carolina provided that writs of election should be issued by the House itself. In South Carolina the Speaker was empowered to issue the writ during a recess of the legislature, while in Maryland he could do so at any time. "The provision in the Maryland Constitution was like the English practice at that time, by which, when a vacancy occurred in the House of Commons, the Speaker could order another election to fill the vacancy."

The Constitution provides that "the House of Representatives shall choose their Speaker and other officers." This provision might be expected, since it appears in nearly all the early State constitutions. The name "Speaker" is given to the presiding officer of the lower house in every case by these constitutions. There seems to have been no debate in the Constitutional Convention concerning the speakership. The members of that body had a very definite idea of the functions of that officer and were of one

mind in thinking that he should be chosen by the House without the dictation or confirmation of any other body or officer.

The term "Speaker" is of English origin, and was applied to the presiding officer of the House of Commons because that official was the spokesman or speaker for the House on official occasions, when conferences were held with the king. The name "Speaker" appears for the first time in 1377. The title was given at that time to Sir Thomas Hungerford, the presiding officer of the House of Commons. A few centuries later the office and the title appear in the American colonies. The presiding officer of the lower house of the colonial legislature was termed the Speaker. This official developed naturally into the Speaker of the national House of Representatives. It is a mistake to suppose that because there was no discussion of the matter in the Convention that the English model was copied. There is a very marked difference between the English and American officials, which would probably not exist had the framers of our Constitution copied the English model. The American Speaker has always been a political leader and not a mere moderator, as the English Speaker has been. The American Speaker is partisan, while the English is impartial. The American Speaker expects to go out of office, and does go out, with his party; but the English Speaker may continue in office after the defeat of his party and the organization of the Opposition. Although the English Speaker is elected by a party, he knows no party when in the chair. He is strictly impartial in public and private intercourse with the members. "It makes little difference," says James Bryce, "to any English party in parliament whether the occupant of the chair has come from their own or from hostile ranks, . . . a custom strong as law forbids him to render help to his own side even by private advice. Whatever information as to parliamentary law he may feel free to give must be equally at the disposal of every member." The speakership in the United States has not developed



along these lines. The Speaker is a party leader, and always has been, even in colonial times.

In a word, then, the speakership in the Federal Constitution is derived immediately from American precedents and remotely from the English Constitution. The same may be said of the House of Representatives. It was developed naturally and logically from the lower house, as found in the colonial charter and the early State constitution. The organization of the House of Commons exerted an influence of an indirect and general character, but it cannot be said to have been copied as a model. When in search of precedents to guide them in their work, the members of the Convention naturally turned to the political experience of their own country, as embodied in their charters and constitutions, rather than to the more remote and less familiar experience of the mother country. The House of Representatives is, then, the result of a long evolutionary process. It is immediately American, ultimately English.

The Senate in the Federal Constitution is derived directly from the upper house of the early State and colonial legislatures, and remotely from the English House of Lords and Privy Council. These two latter bodies were derived from the Witan, and more remotely still from the assembly described by Tacitus as existing among the early Germans. At its organization the United States Senate had an advisory character, which has been largely lost sight of in more recent times as a result of the predominance of its legislative functions. The advisory and executive features may be traced to the Privy Council, and the legislative ones to the House of Lords. It is interesting to note that the upper houses or councils of the colonial and early State periods often served in this dual capacity.

The upper house in the Federal Constitution could not have been copied directly from the English House of Lords, since America contained no nobility and cared for none. The aristocratic feature which is the central element of the upper house in England was entirely lacking in this country.

But there was a nearer and more natural model, namely, the upper house as established by the early State constitutions. In seven of these constitutions the upper house was termed the "Senate," and in all of them there existed a marked similarity in organization and functions. The Senate in the Federal Constitution was made designedly smaller than the House of Representatives. The small upper houses in Delaware, New Hampshire, and Maryland, which consisted of nine, twelve, and fifteen members, respectively, may have had some influence in the organization of the federal Senate; but it is evident from the debates that it was the purpose of the framers of the Constitution to organize a select upper house. Mr. Randolph probably voiced the prevailing sentiment in the Convention when he said that the second branch should be "so small as to be exempt from the passionate proceedings to which numerous assemblies are liable." Mr. Madison expressed himself to the same effect.

In various fundamental features the United States Senate resembles the upper house as it existed at the time in the Constitution of Maryland. The Maryland Senate was a small body, elected not by popular vote, but indirectly, and serving for a long term. The minimum age of twenty-five years was specified for the members.

The term of office for members of the upper houses varied in length from one year in Massachusetts to five years in Maryland.

The members of the upper houses of the State legislatures were chosen by popular election in all the States, with the exception of Maryland. In the latter State the senators were chosen by "electors" selected for this specific purpose. Nearly all possible methods of election were suggested in the Convention, but an indirect method, somewhat similar to that in vogue in Maryland, commended itself to the members.

The fact that there was equal instead of proportional representation in the Senate was due to the famous Connecticut compromise described in a preceding chapter.

The Constitution also provides that the members of the Senate shall go out of office in rotation—one-third of the members retiring every second year. This provision was in keeping with the idea that the upper house should possess stability and permanence. There was precedent for it also. Douglas Campbell claims that the idea of rotation is of Dutch origin. He need not have travelled so far in search of a precedent. The Constitutions of New York, Virginia, and Delaware provided that the members of the upper houses in those States should retire in rotation. In New York the term of office was four years, and one-fourth of the members retired each year; in Virginia the same plan prevailed, while in Delaware the term was three years, and one-third of the members retired annually. In these constitutions, then, there was abundant precedent for the plan of rotation which was made a feature of the national Senate. It might be interesting to remark in passing that Mr. Campbell goes to the most absurd lengths in attempting to prove that our institutions are of Dutch and not of English origin. "We find," he says, "in the Senate of the United States a body which derives most of the peculiarities of its organization from the Netherland republic." If our study of the origins of the Constitution has been of any avail, it should prove the absurdity of this statement. The fact that the Pilgrim Fathers sojourned in Holland for a dozen years before coming to America did not completely transform their political ideas. Governmental institutions are not so extremely susceptible to change.

The president in the Constitution is a copy of the executive officer in the early State constitutions and colonial charters, and is derived very remotely from the king of England. In fact, the chief magistrate in Pennsylvania, Delaware, and New Hampshire was styled the "President." It was this official who was reproduced with some modifications in the Federal Constitution. The lack of a competent executive authority was one of the conspicuous defects of the Articles of Confederation. The

Convention seemed determined from the outset to remedy this defect.

It was quickly decided that the executive power should be lodged in a single individual and not in a commission. Mr. Wilson moved to this effect, on the ground that all the thirteen States had adopted this plan. Here was a conscious and avowed following of the precedents set by the States. It is evident from a perusal of the debates that no effort was made to copy the English king. The temper of the times was entirely against any such proceeding.

The term of office varied in the different States from one year, as in Massachusetts, to three years, as in New York and Delaware. The Constitutions of New Hampshire and North Carolina specified thirty years as the minimum age for the executive, while those of New Hampshire, North Carolina, and South Carolina specify that he shall have been an inhabitant of the State at the time of his election for a period varying from five to ten years.

Practically every possible mode of election was suggested in the Convention, and the method eventually adopted was taken from the Constitution of Maryland. There were obvious objections to having the president elected by popular vote, and it was at first decided to commit the choice to Congress. This was a logical solution, as the executive in eight of the States was chosen in a similar manner. However, it was felt subsequently that this plan would make the executive department dependent upon the legislative; hence, it was necessary to reconsider the matter. The Electoral College was then devised. This has been hailed by many writers as an original invention—the only one made by the Convention. Even Professor Alexander Johnston, who was exceptionally well informed on political matters, said that “the electoral system was almost the only feature of the Constitution not suggested by state experience.” Sir Henry Maine thought that the framers of the Constitution “were to a considerable extent guided” in this matter by the method of electing the emperor of the Holy Roman

Empire. In fact, he even says that "the American republican Electors are the German imperial Electors, except they are chosen by the several States." There is but little similarity, however, between the Imperial College and the American body, while there are some marked and vital differences. There is little reason to suppose that the one was derived from the other. Especially is this true when it is plain that the Electoral College in the Federal Constitution was derived directly from the Constitution of Maryland of 1776. The senators in that State were elected by "electors of the senate" chosen every five years for this particular purpose and no other. The similarity of the two methods was commented upon at the time. James Bowdoin declared in the Massachusetts convention that "this method of choosing [the president] was probably taken from the manner of choosing senators under the Constitution of Maryland."

The size of the Electoral College was determined in a logical way. It had been previously decided that the president should be chosen by joint ballot of the two houses of Congress. The Electoral College was made to correspond in number to the sum of the senators and representatives, in order that each State might have the same proportional weight as under the plan first determined upon.

The Constitution also provides that the House of Representatives shall elect the president in case the Electoral College fails to do so. This provision was probably suggested by a similar one in the Massachusetts convention of 1780, in accordance with which the legislature chose the governor in case no candidate for the office received a majority of the votes of the people.

The veto clause was evidently taken from the Massachusetts Constitution of 1780, although the New York Constitution of 1777 contained the same thing in substance. The similarity, however, between the Constitution of Massachusetts and the federal document is too striking in this particular to admit of error. In the Federal Constitution

we find the same specifications in regard to the exercise of the veto power which appear in the Massachusetts Constitution, and in several instances the exact words of the Massachusetts Constitution are reproduced. In the New York Constitution the veto provision was in substance the same, with the exception that the power was exercised by a council of three, of which the governor was a member.

The office of the vice-presidency developed from that of the deputy or lieutenant-governor in the colonial charters and early State constitutions. In four of the States this official was styled the "Vice-president." He presided over the upper house, and, in many instances, succeeded the governor in case of a vacancy. In some respects he corresponds to the lord chancellor in England. Each presides over the upper house of the legislature. The vice-president is not a member of the Senate, and the lord chancellor is not of necessity a member of the House of Lords. Neither is elected by the body over which he presides.

The vice-president seems to correspond very closely to the lieutenant-governor of New York as provided for in the constitution of 1777. This official was elected in the same manner in which the governor was; he presided over the Senate, but had no vote except in case of a tie, and he succeeded the governor in office in case of a vacancy. It was also provided that the Senate should choose one of its members to preside in the absence of the lieutenant-governor. This official corresponds exactly to the president *pro tempore* of the United States Senate.

Although now the most honored and successful department of our government, the judiciary was not much discussed in the Convention of 1787. There was some difference of opinion with regard to the best method of appointing the federal judges, but even on this matter the debates were not nearly so animated as upon the organization of the other two great departments. The establishment of a judiciary was in harmony with the idea of the

separation of the three great departments which then dominated political thought in America. Many of the States had distinct judiciaries, and the absence of one in the Articles of Confederation was looked upon as a marked defect. The judiciary was not unique or unprecedented in the matter of organization. In regard to position and power it was unique. Hamilton remarked in the *Federalist*: "Contrary to the supposition of those who have represented the plan of the Convention, in this respect, as novel and unprecedented, it is but a copy of the Constitutions of New Hampshire, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia." This statement of Hamilton's is, without doubt, somewhat too strong. Most of the State constitutions mentioned supreme judiciaries, but only a few actually *constituted* them. The Constitutions of Delaware and Maryland, however, did provide for supreme courts corresponding to the United States Supreme Court.

As remarked above, there was some discussion as to the best method of choosing the members of the supreme bench. Mr. Gorham "suggested that the judges be appointed by the executive, with the advice and consent of the second branch, in the mode prescribed by the Constitution of Massachusetts." This was the method finally adopted. It was also decided that the judges should hold their offices for life, or during good behavior. This provision, also, Hamilton remarked in the *Federalist*, was "conformable to the most approved of the State constitutions." In the light of these facts, we can hardly look upon the Supreme Court as Sir Henry Maine does, as a "virtually unique creation of the founders of the constitution." The truth is that Sir Henry Maine, although a profound scholar, utterly ignores the fact that there were nearly two centuries of constitutional development on American soil before the Federal Convention met. He omits a proper consideration of the colonial charters and early State constitutions. So does the writer in the *Encyclopædia Britannica* when he







Fisher Ames. *From the crayon drawing by James Sharpless, in Independence Hall, Philadelphia.*

remarks: "The American Constitution of 1789 was a faithful copy, so far as it was possible to make one out of the material in hand, of the contemporary constitution of England." Such an error as this is easily made by an investigator who has not studied the development of English institutions in America from 1607 to 1787. As he reads the Constitution of the United States, he may conclude that the impeachment process was copied from that in vogue in England for centuries, not knowing that a nearer precedent is found in the Constitutions of Massachusetts and New York. The privileges of Congress, bills of attainder, *ex post facto* laws, the writ of *habeas corpus*, the provision for the support of the army limited to two years, the exclusive right of the lower house to originate money bills—all these provisions seem to be English, and are so remotely, but why seek a precedent for a constitutional principle in the Magna Charta of 1215, when the same precedent in a higher state of development exists in an American State constitution of 1780?

Not much remains to be said in conclusion. The Constitution was made up of governmental principles which had been tested by the actual experience of the colonies, the early States, and England. The members of the Convention did not indulge themselves in fantastic experimentation. It was too serious a matter. As James Russell Lowell remarked in an address before the New York Reform Club in 1888, the Convention "was led astray by no theories of what *might* be good, but clave closely to what experience had demonstrated to *be* good." Herein lies the strength of our Constitution. If an attempt had been made to make it "original," as the first constitutions of France and the "Fundamental Constitutions" of John Locke were "original," it would have been relegated long since to the political scrap heap. There were, of course, some original features in the new form of government. The federation itself was more ambitious than anything of the kind which had ever before been attempted. There was nothing like

it in all history. It impressed De Tocqueville as being a new thing under an old name. Then, too, the position and attitude of the judiciary were unique; and the "isolated position" of the president, as Professor Robinson well puts it, was original. The edifice and some of its features were new, but the material of which it was composed had been well seasoned and thoroughly tested. This view, too, instead of detracting from the fame of the Fathers of the Government, adds new lustre to it. It gives them credit for a far-sighted statesmanship which no "spontaneous creation" could possibly do. It also shows the wonderful adaptability of British institutions.

## CHAPTER IX

### *THE INAUGURATION OF THE GOVERNMENT*

ON the afternoon of March 3, 1789, the battery guns in New York fired a farewell salute to the government of the Confederation. At dawn on the following day, the same guns fired another salute to the new government and the bells of the city churches rang out the new era. There was little else, however, to mark the transition from the old order of things to the new. The old form of government was dead, but as yet the new showed few signs of life. The Congress of the Confederation had dragged on its weary existence until the 2d of March. Then, unnoticed by the public, it ceased to be. Although the 4th of March was the date set by the resolution of Congress for the inauguration of the president and the starting of the new régime, the city of New York, the chosen seat of the government, showed few indications of the new order, aside from the booming of the cannon and the ringing of the bells. Indeed, it was found that on the day appointed for the inauguration there were in the city of New York only eight senators instead of twenty-two, and thirteen representatives instead of fifty-nine. Without a quorum of the two houses, the electoral vote could not be counted and no legislation could be enacted.

As noted in a previous chapter, the Constitution specified that the new form of government should go into operation as soon as ratified by nine States. New Hampshire, the

ninth State, ratified on the 21st of June, 1788, and on the 2d of July following the president of Congress reported to that body that the requisite number of States had approved the new Constitution. A committee was appointed on the same day to formulate a plan "for putting the said Constitution into operation." The report of the committee was made and adopted in due time. The plan provided that the presidential electors should be chosen on the first Wednesday in January, 1789, that they should cast their ballots on the first Wednesday in February, and that the president thus elected should be inaugurated on the first Wednesday in March. Thus, after a considerable delay, Congress had made adequate provision for starting the wheels of the new mechanism. This decision, however, was not reached until the 13th of September, largely because of a difference of opinion in regard to the location of the seat of government; and consequently only a limited time was given to the States for the choice of their electors. The States up to this time had made no preparations whatever for the holding of elections, as the adoption of the new Constitution was by no means certain until the ninth State had ratified it. Then, too, the initiative properly lay with Congress, and the States were awaiting the action of that body. Things moved slowly in those days. Transportation facilities were crude and the mails crept along at a snail's pace. About two weeks were required for the news of the action of Congress to reach the more remote of the State capitals. However, the matter was taken up and presidential electors were duly chosen in each of ten States. North Carolina and Rhode Island had not yet ratified the Constitution, and consequently took no part in the election. The method of election was not prescribed, and in some of the States the electors were chosen by the legislatures and in others by the people. New York failed to elect because of a deadlock between the two branches of the legislature, and thus lost its vote. The remaining ten States cast their votes in the manner prescribed.

There were no caucuses or conventions to nominate candidates. None was really necessary, particularly in respect to the presidency. The name of Washington was upon every tongue. He was again the one indispensable man. He had guided the affairs of the Revolution; he had presided over the Constitutional Convention; and now he was looked upon by the common consent of the nation as the best man to inaugurate the new scheme of government. With singular unanimity, the people summoned him from his beloved retirement at Mount Vernon. Even the anti-Federalists, who had arraigned him so bitterly and so malignantly while the Constitution was being ratified, did not openly oppose his election. It is stated that "for a time the pretensions of Franklin were discussed in private circles," but it is certain that he was never seriously considered in connection with the presidency either by the people or by himself. The word "pretensions" is unfortunately used in this connection, as Franklin never aspired to the position and probably did not know at the time that he was being "discussed in private circles." In regard to the vice-presidency, public opinion was not so well crystallized. John Adams was the undoubted favorite of a large majority of the people, but there was no such unanimity or spontaneity as existed with respect to Washington. Adams had much to commend him. He had been a thoroughly honest, able, and fearless champion of popular government. He was in the forefront of the debate when the Declaration of Independence was passed and was a strong defender of the present Constitution. His bluntness of manner and his aristocratic tendencies had given offence to some, but he was favored, and with good reason, by a large majority of the American people. Other names were mentioned by the Federalists in connection with the office, but Adams had no serious competitor. The vain and vacillating John Hancock was thought of by some, but he was considered to be of more use as Governor of Massachusetts. Samuel Adams was in the minds of some who remembered his effective services

in the cause of independence, but his lukewarm attitude toward the Constitution and his eleventh-hour repentance did little to commend him. General Knox, too, of Revolutionary fame, was mentioned, but was not seriously considered because it was tacitly agreed that the vice-president should be a civilian, since the president was to come from the military ranks. This elimination left John Adams without a formidable competitor. It will be noted that all those mentioned for the place were Massachusetts men. Even at this early time, geographical considerations were not without their weight. The presidency was conceded to the South, the seat of government had already been located in a Middle State, and it was felt that the vice-presidency should go to New England. In this case the claims of Massachusetts were conclusive. However, aside from all such external considerations, the fitness of John Adams for the position was universally recognized. In the minds of many the man was really too large for the office, but there was some consolation in the fact that it was looked upon as a stepping stone to the presidency. Among the anti-Federalists, George Clinton, of New York, was at one time the favored candidate. His party entertained no hope of electing him to the presidency, but his election to the vice-presidency would not have surprised them. His hopes were blighted, however, as New York lost its vote by a deadlock, and New England did not endorse his candidacy as was hoped. Anti-Federalism was no longer popular or vigorous. It was practically a dead issue, and Clinton was compelled to be content with the three votes given him by Virginia. As is well known, the choice of Washington was unanimous, while John Adams received thirty-four out of a possible sixty-nine votes. According to the Constitution as it then stood, the candidate receiving the largest number of votes in the Electoral College was elected president, provided that number be a majority of all the votes cast, and the one receiving the next highest number was elected vice-president. John Adams's thirty-four votes,

although not a majority of the Electoral College, were thus sufficient to ensure his election. The vote of John Adams does not correctly represent the esteem in which he was held by the people. It was no doubt materially reduced by the connivance of Alexander Hamilton. Hamilton's motive is not clear, but the facts are well established. He succeeded in inducing some of the electors who would otherwise have cast their ballots for Adams to throw their votes away by casting them for other candidates. He may have feared the candidacy of George Clinton, as there was some talk of a coalition between the forces of Clinton and Adams. It was hinted that New York and New England would combine to elect these two men. It is probable, however, that Hamilton was too astute a politician to be deceived in this way. The more probable hypothesis is that Hamilton embraced this as an opportunity to humiliate Adams, whom he disliked. He seems to have intimated that some of the electors would not vote for Washington and to have expressed the fear that a large vote for Adams might result in making the latter president and Washington vice-president. But whatever the motive may have been, it is certainly true that the vote of Adams would have been larger had it not been for the manipulation of Hamilton. It is also true that Hamilton's reputation for shrewdness and honesty was not enhanced by this connivance.

It was necessary also to elect a new Congress. The Constitution specified that the senators should be chosen by the legislatures of the various States, and the representatives by popular vote. It did not specify, however, the exact method by which the choice of the people should be made known. The details of the matter were left to the States, and the result was that some of the representatives were chosen by a general ticket and others by the district method, such as is now in vogue. The election machinery was new and there was consequently much friction. Things did not move with alacrity. Business was done in a cumbersome way; transportation facilities were crude; and men's



minds were adapted to their material surroundings. The result was that when the 4th of March arrived only a small minority of the members of Congress were at the seat of government. Informal meetings were held by those members already in New York, and urgent calls were sent out to their dilatory colleagues. The members appeared with painful slowness, much to the discomfiture of the Federalists, but to the great joy of their opponents. It was nearly a month beyond the appointed time before either house was able to organize. On the 1st of April, with a bare quorum of thirty, the first House of Representatives was organized with Frederick A. Mühlenberg, of Pennsylvania, as speaker. A word with regard to the Mühlenberg brothers should be inserted at this point. Frederick A. Mühlenberg had been a minister in the Lutheran Church in Revolutionary times, but he was attracted from the pulpit into public life and served in the Continental Congress. He also presided over the Pennsylvania Convention which ratified the Constitution, and was now chosen to preside over the first House of Representatives. His brother, Peter Mühlenberg, was a rector in the Anglican Church when the Revolution broke out. His impulsive and patriotic spirit would not be curbed. He preached a farewell sermon to his congregation, in which he remarked: "There is a time for all things—a time to preach and a time to fight; and now is the time to fight." He left his pulpit forthwith and went to Virginia to raise a regiment for the war. He was now a member of this first House of Representatives, over which his brother had been chosen to preside.

This first House of Representatives contained many able and influential men. Madison was the leader of the House, partly because of his intimate relations with Washington, but more especially because of his surpassing ability and long experience in public affairs. He had been elected to the House in spite of the strong anti-Federal sentiment in Virginia. The influence of Henry kept him from a seat in the Senate, which he would have preferred. A vigorous

effort was also made to defeat him for the House. James Monroe, a future President of the United States, was pitted against him. After a memorable campaign, in the course of which the two candidates met in joint debates, Madison was elected. Elbridge Gerry, of Massachusetts, and George Clymer, of Pennsylvania, were also there. The frail but intellectual and eloquent Fisher Ames had won a seat by defeating Samuel Adams in Massachusetts. Hamilton, Wilson, John Jay, the two Pinckneys, and others well known in the history of this period, were not elected to this first Congress. Some of these men were destined to be called to higher positions in the organization of the new government, and others preferred to remain in private life.

The organization of the Senate was effected on the 6th of April. Among its members there were many familiar faces: Robert Morris, George Read, of Delaware, Richard Henry Lee, of Virginia, Ellsworth, of Connecticut, Patterson, of New Jersey, and Charles Carroll of Carrollton (Maryland),—destined to be the last survivor of the signers of the Declaration of Independence,—had seats in the first Senate.

The complexion of the first Congress was decidedly Federal. Though the Virginia senators were anti-Federalists, and so were a few members of the House from New York, Virginia, and South Carolina, the more pronounced partisans among the anti-Federalists had been left at home. Antagonism toward the new Constitution had greatly abated. The new form of government was now looked upon as an accepted fact, and the people for the most part were disposed to give it a fair trial. The anti-Federalists were, of course, still censorious, but not aggressively so. When Congress fixed the compensation of senators and representatives at \$6 per day and mileage, they snarled about the "shameful cost" of the new government, but were not inclined to press the point. In this connection it might be well to remark that the salary of the president was placed

at \$25,000 per year, although Washington had asked only his expenses; that of the vice-president at \$5,000; that of the chief justice at \$4,000; while the speaker of the House of Representatives was given double the pay of an ordinary member.

As noted above, the vote of the Electoral College was counted on the 6th of April. On the following day Mr. Charles Thomson, who had been clerk of every American Congress, departed for Mount Vernon to notify Washington of his election. It was known that Washington would accept the office, as he felt it his duty to do so. On the 16th of April, he set out for New York to assume the duties of his new office. Washington wrote in his diary: "About ten o'clock I bade adieu to Mount Vernon, to private life and to domestic felicity; and with a mind oppressed with more anxious and painful sensations than I have words to express, set out for New York, with the best disposition to render service to my country, in obedience to its call, but with less hope of answering its expectations." His entire journey from Mount Vernon to New York was like a triumphal procession. Never was there in the United States such a sincere and spontaneous outpouring of the people. The receptions which were accorded him along the line of his journey were varied in character. At Alexandria he was tendered a public dinner, a guard of honor escorted him through Baltimore, the Governor of Pennsylvania, with a party of citizens and soldiers, met him at the State line, at Philadelphia he passed under triumphal arches, and his reception at New York was in keeping with the importance of the city and the dignity of the man. His reception at Trenton, however, impressed him more deeply than any other. "It was a sunny afternoon," says Irving, in his *Life of Washington*, "when he arrived on the banks of the Delaware, where twelve years before, he had crossed in darkness and storm, through clouds of snow and drifts of floating ice on his daring attempt to strike a blow at a triumphant enemy."

"Here at present all was peace and sunshine, the broad river flowed placidly along, and crowds awaited him on the opposite bank, to hail him with love and transport.

". . . The reader may remember Washington's gloomy night on the banks of the Assunpink, which flows through Trenton; the camp fires of Cornwallis in front of him; the Delaware full of floating ice in the rear; and his sudden resolve on that midnight retreat which turned the fortunes of the campaign. On the bridge crossing that eventful stream, the ladies of Trenton had caused a triumphal arch to be erected. It was entwined with evergreens and laurels, and bore the inscription, 'The defender of the mothers will be the protector of the daughters.' At this bridge the matrons of the city were assembled to pay him reverence, and as he passed under the arch, a number of young girls, dressed in white and crowned with garlands, strewed flowers before him, singing an ode expressive of their love and gratitude. Never was ovation more graceful, touching, and sincere; and Washington, tenderly affected, declared that the impression of it on his heart could never be effaced."

From the beginning to the end of his journey there were enthusiastic gatherings of the people in honor of the first citizen of the United States. The cannons, the music, the flowers, and the poems of love and respect which met him everywhere, were the expressions of a loyal, loving, and confiding people. The white-robed choir of Trenton was the graceful expression of a universal sentiment. The scene was deeply impressive, and impressed Washington most of all. He was gratified by these evidences of popular esteem and confidence,—who would not be?—but at the same time he recorded the fact that his mind was filled with sensations as painful as they were pleasing. He was oppressed and even saddened by the weight of the responsibility which he bore. His rugged and stately figure, clothed in buff and blue, seemed equal to any emergency, but in his calm dignity there was no overconfidence.

On the 30th of April, shortly after his arrival at New York, Washington took the oath of office. There were vast crowds in the city to witness the inaugural ceremonies, and services were held in the churches in the forenoon. At twelve o'clock Washington went to Federal Hall, on the corner of Wall and Broad Streets, where the oath of office was administered by Chancellor Livingston, of New York. The ceremony, which was one of simple but impressive and stately dignity, took place in the balcony of the building, in full view of an immense throng of people. At its conclusion, Mr. Livingston stepped forward and cried out: "Long live George Washington, President of the United States!" This was the signal for a mighty shout from thousands of throats. The flag was run up and the battery guns rang out the first salute.

In his inaugural address Washington sought to impress upon Congress the seriousness of the situation. He would have that body appreciate the importance of the experiment upon which it was entering, but wisely refrained from anything like dictation. He also strengthened his position by announcing that he would receive no compensation for his services aside from his necessary expenses. This first inaugural address left a deep impression upon those to whom it was addressed. "It seemed to me," said Fisher Ames, "an allegory in which Virtue was personified as addressing those whom she would make her votaries. Her power over the heart was never greater, and the illustration of her doctrine by her own example was never more perfect." Washington was described as "kingly yet unkingly in his bearing." "It was a very touching scene," writes another witness, "and quite of the solemn kind. His aspect, grave almost to sadness; his modesty actually shaking; his voice deep, a little tremulous, and so low as to call for deep attention; added to the series of objects presented to the mind and, overwhelming, produced emotions of the most affecting kind upon the members." The two houses, following the British practice, made addresses in reply to the

inaugural speech. This useless custom was soon discontinued. It served no good purpose.

"I walk on untrodden ground." These words were penned by Washington shortly after his inauguration. They showed his appreciation of the situation. He had no direct and positive precedent to guide his course. When he assumed the duties of his office on the 30th of April there was almost nothing to begin on. The old form of government had ceased to exist and the new one was not yet organized. The President and Congress were ready to begin their work, but all departments of the government had to be formed anew. Some questions of the most vital importance and others of a very trivial character were pressing for solution. Should the president be styled "His Highness the President of the United States and Protector of their Liberties," or simply "The President of the United States"? Would it help matters, asked Jackson, of Georgia, to address him as "Your Serene Highness"? Should the president receive and return calls? Whom, if anyone, should he ask to dine with him? What should be the etiquette of his formal receptions? Should the persons thus received take seats or remain standing? Should democratic simplicity or the pomp and ceremony so common at European courts at the time prevail? Should the president hold himself aloof from the people or should he mingle familiarly with them? These and other questions of a similar character, trivial, but perplexing nevertheless, had to be decided at the very outset. The president, with his customary tact and good sense, decided upon a moderate policy in these matters and avoided extremes.

There were other matters, however, of more significance than mere questions of etiquette. The attitude of the new republic toward European powers was of the highest importance. The French minister, for obvious reasons, thought his country entitled to special privileges; but he was soon made to understand that no nation would be the recipient of special favor. A policy of neutrality was wisely

decided upon. The new republic was hardly strong enough to venture upon a course of favoritism or vindictiveness. The matter of appointments was also significant; but here, too, favoritism found no place. It was also decided that the Senate should choose its committees by ballot, and that its members should be divided into the classes by lot. The House, after the first session, decided to allow the speaker to appoint its committees. While the president's message was presented to the two houses orally, it was decided that all executive communications to the Senate should be submitted in writing. Some of the senators wanted the president to appear in the Senate in person and to remain until a ballot in ratification had been taken, but this idea did not prevail.

The formation of the Cabinet was one of the most important matters in connection with the organization of the government; Congress provided for three executive departments,—that of foreign affairs, the treasury, and war. It was the duty of the president to appoint the heads of these departments; and these three department heads, in connection with the attorney-general, became the advisory body of the executive. The appointments were made with good judgment. Thomas Jefferson was made secretary of foreign affairs. He had had a long experience in the diplomatic service, and was therefore conversant with international affairs. In addition to this he was a man of influence and popularity at home and was looked upon as a friend of the new form of government, although he had taken no part in its formation. Washington and Jefferson were both Virginians, but their relations had never been confidential and hardly sympathetic. They were utterly unlike both in temperament and abilities, and the appointment was made, not on personal grounds, but on the basis of merit.

Hamilton was placed in charge of the treasury department. The appointment was a bold one. Washington passed over the entire treasury board and appointed the brilliant young West Indian at the age of thirty-two "to unravel the tangled skein of Continental finances." No better selection could

possibly be made. Hamilton must be accorded first place in the list of American financiers. As his duties were the most arduous, so were they the most successfully accomplished. It is not too much to say that the very life of the republic depended upon the management of this department. The finances of the Confederation had been woefully mismanaged since the retirement of Robert Morris. The affairs of the department were in a deplorable condition. There was ample opportunity for Hamilton to display that brilliant constructive statesmanship for which he was so justly noted. If Alexander Hamilton had done nothing else but lay the foundation of our national credit, he would deserve a high place among American statesmen. As it is, he stands second only to Washington among the men of his time.

Henry Knox, a distinguished soldier of the Revolution, was appointed to preside over the war department. Knox was honest, able, and loyal, and an element of strength to the new Cabinet.

Edmund Randolph, the proposer of the Virginia Plan in the Constitutional Convention, was made attorney-general. The department of justice was not established as a separate executive department until a later time, but Randolph was included by Washington in his advisory body.

Such, then, was the personnel of Washington's first Cabinet. Although the members were still young men,—Hamilton was thirty-two; Randolph, thirty-six; Knox, thirty-nine; and Jefferson, forty-six,—they were all well known on both sides of the Atlantic, and, taken collectively, this first presidential Cabinet has never been excelled in ability.

There were, however, other matters pertaining to the Cabinet besides the appointment of the members which demanded attention. It was definitely specified in the Constitution that the president's appointments should be approved by the Senate. The question now arose: Can the president remove the members of his Cabinet upon his own authority, or is the concurrence of the Senate necessary? Madison contended in Congress that the president should



have the sole power to remove a Cabinet officer, and his view prevailed. If it had not, a Cabinet officer might cultivate a following in the Senate and thus remain in office against the wishes of the president and to the embarrassment of the executive department. Vice-president John Adams is entitled to credit in this connection, as it was by his casting vote in the Senate that the necessary authority was granted to the president.

It was also necessary to determine the relations which should exist between the president and his Cabinet. The matter was not definitely set forth in the Constitution. In fact, there was no specific reference to a Cabinet at all. The proposition to constitute an advisory council for the executive was defeated in the Convention, and the Constitution makes only a vague reference to an advisory body when it says that the president "may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices." This clause would not necessarily imply a Cabinet such as now exists, and Washington interpreted it in its most obvious meaning. He usually took the advice of each member separately and never convened the Cabinet as a whole except on extraordinary occasions. Having procured the advice of each individual member, he decided the point in question as it seemed best to him. During the administration of John Adams the functions of the Cabinet were more fully developed, and that body was inclined to insist somewhat upon being consulted. During Jefferson's administration the Cabinet practically assumed the position which it now holds. Jefferson was accustomed to submit important matters to his advisory body for discussion and decision. He himself voted with the rest and usually looked upon the decision thus obtained as final. He always held that he had a constitutional right to reverse the decision of his Cabinet, but, as a matter of fact, rarely did so.

It was also necessary to determine the relationship and mode of communication which should exist between the



De Witt Clinton. *After the original by Charles C. Ingram, now the property of Mrs. James Robinson.*



Cabinet and Congress. In Great Britain, at the time, the members of the Cabinet held seats in Parliament; but the American Constitution, in endeavoring to constitute three separate departments of the government, did not accord to Cabinet members seats in either house. Neither was there any authorized mode of communication between the Cabinet and Congress. It was suggested that the Cabinet members should appear before Congress and discuss the legislation needful for their departments. There was nothing in the Constitution to prevent such a mode of communication, and it commended itself to many. It was not to be, however. Soon after Hamilton took charge of the treasury department, he was desirous of appearing before the lower house to explain his financial plan. The method would seem an admirable one, but the political and personal enemies of Hamilton, fearful of the prestige which he might gain from such a course, would not allow him a hearing. The decision in this case has served as a precedent, and the members of the Cabinet have never appeared before either house to suggest or to explain legislation, but have communicated with Congress in writing or through the committees.

The organization of the judiciary department also rested with Congress. The Constitution simply says that "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." After thus outlining the department with a few bold strokes, the details of the matter were left to Congress. There was comparatively little discussion in the Convention in regard to this department, yet the work was well done. The judiciary has been well characterized as the "sleeping lion" of the Constitution. It is the most dignified and respected of the three departments and no small part of its success is due to its careful organization in 1789. John Jay, of New York, was the first chief justice of the United States. He was a man of lofty ideals and sterling character. It has been well said that the ermine rested upon a man as pure

and spotless as itself when it fell upon the shoulders of John Jay. The character and ability of his associates were in keeping with his own high standards. Wilson, of Pennsylvania, Rutledge, of South Carolina, Blair, of Virginia, and others,—all men of integrity and ability,—were appointed associate justices. The Circuit and District Courts were also organized. The bill for the organization of the judiciary was introduced into the Senate by Ellsworth.

In all his appointments, Washington selected men of honesty, ability, and reputation. It was his settled policy to do this. "I want men," he said, "already of marked eminence before the country, not only as the more likely to be serviceable, but because the public will more readily trust them."

It is sometimes said that the organization of the government by Washington was non-partisan. Color is given to this statement by the fact that the Cabinet included both Hamilton and Jefferson, who stood at the opposite poles of political thought. The statement, however, is not strictly true. The Cabinet appointments, and even the judicial appointments, were in one sense strictly partisan. Only the friends and advocates of the Constitution were included. There was no place for such men as Patrick Henry, Richard Henry Lee, and George Clinton. Had an effort been made to conciliate all parties, it would have been necessary to give the anti-Federalists some representation. Washington, however, wisely refrained from any such attempt. Mixed Cabinets have never been successful, and even this eminent one lost much of its effectiveness when it became divided by party contentions. The best of results could not be obtained while Jefferson and Hamilton were antagonistic to each other, with Randolph siding with the former and Knox with the latter.

It was necessary to append some amendments to the Constitution in order to keep faith with the people. It was noted in the chapter on the ratification of the Constitution that the new form of government was vigorously assailed

because it did not contain a "Bill of Rights." It will also be remembered that several of the States, while ratifying the Constitution unqualifiedly, suggested various amendments. It was tacitly agreed that these proposed changes should be considered at the proper time. This was done. Twelve amendments were selected from the seventy-eight suggested by the States and were submitted by Congress to the States for approval. Ten of these were adopted and now practically constitute a Bill of Rights. The amendments were not essential to the protection of the people, because, as Hamilton remarked, the whole Constitution is a Bill of Rights; yet their adoption did much to inspire confidence in the new form of government. One of the amendments which was not ratified by the necessary three-fourths of the States provided that changes made in the salaries of members of Congress should not be effective during the term of the representatives participating in the passage of the act. An effort was made by some members of Congress to defeat the adoption of any amendments at this time. The attitude was evidently a mistaken one. Even Fisher Ames erred in this respect. "The proposed amendments," he said, "will stimulate the country's stomach as little as hasty pudding." Fortunately, this view did not prevail, and faith was kept with the people. The first ten amendments may be considered as practically a part of the Constitution, since they were adopted at the beginning of the government and as the result of suggestions passed by the various State conventions. There are, then, practically but five amendments which should be looked upon as real modifications of the Constitution. This fact speaks well for the care and foresight with which the document was drafted. The adoption of five amendments in one hundred and fourteen years cannot be considered excessive, especially when three of these relate to one subject. For a period of sixty years no amendment whatever was made.

The three great departments of the government were now organized and ready for the transaction of business.



## CHAPTER X

### *FINANCES*

INASMUCH as the demoralized condition of the finances was a source of the greatest evil under the Confederation, this matter naturally received the first attention of Congress. The new Congress had been organized but seventy hours when the financial problem was taken up. James Madison took the initiative and introduced a bill which, when passed, became the first tariff act of the national period. The birth of the tariff question was, then, almost coincident with the organization of the new form of government. Since the nature of this first tariff act has been much discussed, it is well to note its predominating characteristic. It was not primarily a protective measure, as has been so often asserted, but was intended, in the first instance, as a revenue measure with incidental protection to home industries. The revenue idea was the predominating one, and the protective feature was a matter of secondary importance. This is evident from a perusal of the measure itself, and from a study of the debates upon it. It is true that the protective feature was emphasized by some of the debaters. One member proposed to enlarge the list of dutiable articles in order to "encourage the productions of our country and to protect our infant manufactures." Some manufacturers of Baltimore also petitioned Congress to impose on "all foreign articles which can be made in America, such duties as will give a just and decided preference to our labors." The measure also was entitled: "An Act for the encouragement



and protection of manufactures." The duties which were levied, however, were very moderate. The bill was modelled after the old five per cent duty bill which the Congress of the Confederation had attempted to pass some time before in order to procure revenue for the support of the government. The primary object of the bill of 1789 was the same as that of the former bill, and the duties were placed correspondingly low. It is true that in certain instances the rate of duty was more than five per cent. On certain articles of luxury, such as carriages, the duty was as high as fifteen per cent; and in levying the duty on some other commodities, such as hemp, iron manufactures, and glass, the legislators probably sought to aid domestic manufacturers; but the average duty was only five per cent. It would probably have been impossible at that time to pass any bill of a decidedly protective character. Madison, in the course of the debate, expressed himself as opposed to such a policy. "I own myself the friend of a very free system of commerce," he said, "and hold it as a truth, that commercial shackles are generally unjust, oppressive and impolitic; it is also a truth, that if industry and labor are left to take their own course, they will generally be directed to those objects which are the most productive; and this in a more certain and direct manner than the wisdom of the most enlightened legislature could point out." The bill introduced by Madison became a law on July 4, 1789.

Tonnage duties were also levied by Congress during its first session. In the levying of these duties, an effort was made to favor American ships. The duty on American ships was six cents per ton, while that levied on foreign vessels was fifty cents. Goods imported in American bottoms were admitted to our ports upon the payment of a duty ten per cent less than that imposed upon goods conveyed in foreign bottoms. One of the main objects of the act was to stimulate the construction of American vessels. Georgia and the Carolinas objected to the measure somewhat, but the opposition was not a very determined one.

These two acts are interesting as pioneer measures, but are insignificant in importance when compared with that financial legislation initiated and shaped by Alexander Hamilton. His plans, as outlined in his reports to Congress, were adopted in substance by that body, and constitute the foundation of our financial system.

It was soon found that the Act of 1789 did not yield an adequate revenue, and it was revised in 1790 and again in 1792, at the suggestion of Hamilton. There was still need for more revenue for the support of the government. To make up a deficit of \$826,000, Hamilton recommended a system of excise duties such as already existed in several of the States. In a report to the House of Representatives, he said that he found nothing "so eligible and unexceptionable, in his judgment, as a further duty on foreign distilled spirits, and a duty on spirits distilled within the United States." He estimated that the duties which he advocated would produce about \$877,000 annually, and recommended that the surplus be used to increase the sinking fund for the payment of debts. The tax thus advocated was not burdensome, and the revenue which it yielded was small, yet there was much opposition to its enactment. The South was particularly opposed to it. Jefferson resisted it for the same reason that Hamilton favored it. In addition to increasing the revenue of the government, Hamilton thought it important that the people should become familiar with officers of the federal government. Jefferson, on the other hand, declared that he did not wish to have a tax gatherer in sight. An excise duty is usually more irritating than a tariff duty, and in this case the tax on distilled spirits was especially objectionable to the people of many localities. In fact, the Act of March 3, 1791, which levied what is popularly known as the "whiskey tax," led to open rebellion. The conditions in 1791, however, were very different from those of the present day. At that time the distilled spirits were produced in thousands of small manufactories instead of in a comparatively few large institutions. There were

three thousand distilleries in Pennsylvania alone, and the tax was a grievous burden upon them. The grievance was intensified by the poor transportation facilities and the resulting high freight rates. The farmers of the interior found it impossible to ship their grain to the coast, but found it profitable to send the distilled spirits before there was a tax to pay. In this respect the farmers of the interior were placed at a disadvantage when compared with those of the seaboard, and no remedy could be afforded them, as the Constitution provided that duties should be uniform throughout the United States.

The masterstroke of Hamilton's financial policy is seen in his reestablishment of American credit. The nation was virtually bankrupt. Its credit had vanished in the presence of a large foreign and domestic indebtedness and a great volume of Continental currency. The foreign debt was about \$10,000,000, upon which interest had accumulated to the amount of \$2,000,000. The domestic debt was about \$30,000,000, with \$11,000,000 of interest arrears. There was thus an indebtedness of about \$53,000,000 in these two items. In addition to this, about \$75,000,000 or \$80,000,000 of Continental currency was yet outstanding. In 1780 Congress had funded this at the rate of \$40 for \$1 in coin. The new certificates soon fell, however, to about twelve per cent of their par value. This was the situation which Hamilton was forced to face. The creditors pressed Congress to take some action in the matter, and the House of Representatives passed a resolution declaring that "an adequate provision for the support of the public credit" was "a matter of high importance to the national honor and prosperity." In view of this fact, the secretary of the treasury was directed to prepare a plan for meeting the obligations of the nation and to make a report to the House. Hamilton did his part with great care and conspicuous ability. His report was submitted to the House of Representatives on January 14, 1790, and constitutes one of the most important state papers in American

history. It is based upon sterling honesty and good faith, and its adoption placed the credit of the nation upon a foundation of solid rock. In a few short paragraphs the secretary showed the imperative necessity for public credit and then asked: How is it to be obtained? His answer was: "By good faith; by a punctual performance of contracts. States, like individuals, who observe their engagements, are respected and trusted, while the reverse is the fate of those who pursue an opposite conduct." He urged that there was an additional reason why the debt of the United States should be honorably and fully discharged. "It was the price of liberty," and the payment of the price was a sacred duty. The definite objects to be attained are tersely set forth in the following paragraph: "To justify and preserve . . . confidence; to promote the increasing respectability of the American name; to answer the calls of justice; to restore landed property to its due value; to furnish new resources, both to agriculture and commerce; to cement more closely the union of the States; to add to their security against foreign attack; to establish public order on the basis of an upright and liberal policy; these are the great and invaluable ends to be secured by a proper and adequate provision, at the present period, for the support of public credit."

There is the genuine ring of honesty sounding throughout the entire report. Hamilton insisted strenuously that the debt, both foreign and domestic, should be paid in full. He held that the foreign debt should "be provided for according to the precise terms of the contracts relating to it," and that the domestic debt should be liquidated at its face value. Some were of the opinion that it was unjust to pay the face value to holders of United States securities which had been purchased at ridiculously low rates. Even Madison entertained this view, and proposed that an inquiry be made and that the individual holding a security should be reimbursed to the extent of its cost to him, and that the remainder up to the par value should be paid to the original holder. To this plan Hamilton objected. He held that it was essential to

the future credit of the nation that the legal holder of the security be paid the face value of the holding. The suggestion of Madison he rejected as "unjust and impolitic; as highly injurious, even to the original holders of public securities; as ruinous to public credit." Hamilton declared such a course to be—as it was—"a breach of contract—a violation of the rights of a fair purchase." He expresses himself succinctly in the following words: "The nature of the contract in its origin is, that the public will pay the sum expressed in the security, to the first holder or his assignee. The intent in making the security assignable, is, that the proprietor may be able to make use of his property by selling it for as much as it may be worth in the market, and that the buyer may be safe in the purchase." . . . "Every buyer, therefore, stands exactly in the place of the seller; has the same right with him to the identical sum expressed in the security; and, having acquired that right, by fair purchase, and in conformity to the original agreement and intention of the government, his claim cannot be disputed, without manifest injustice."

He maintained further that to pay the debts at anything less than their face value would be repugnant to the Constitution. He quoted the provision that "all debts contracted, and engagements entered into, before the adoption of that Constitution, shall be as valid against the United States under it, as under the Confederation," and held that this amounted to a "constitutional verification of the contracts respecting the debt," and "that the rights of assignees and original holders must be considered as equal."

Fortunately for the credit of the nation, Hamilton's view prevailed; and Congress made provision for the payment of the interest and for the setting aside of a sum annually to apply on the principal. Loans were negotiated to meet both the foreign and the domestic debt. The plan met every expectation. Securities began to rise at once, and in 1793 were quoted at par. American credit was restored and national honor upheld.

The most vigorous opposition to Hamilton's plan was yet to come. In addition to providing for the national debt, Hamilton proposed that the general government should assume the debts of the various States which had been incurred as a result of the Revolution. He insisted that the States had contracted these debts for the common defence, and that they should be borne by the entire people. The obligation to liquidate them was just as sacred as that which existed in the case of debts due to foreigners. The debts were contracted for substantially the same purpose, and all creditors should be treated in the same manner. Hamilton insisted that the interest as well as the principal of the debt should be paid in full. "Arrears of interest have pretensions at least equal to the principal." As remarked above, there was a fierce opposition to the proposal to assume the debts of the States. It was contended that such assumption would be unjust to Virginia and some other States which had by strenuous efforts already paid a large part of their war debts. It was held, too, that the plan would be a hardship to those States which had procured their revenue by taxation rather than by loans. It was urged in addition that the amount of the State debts was unknown at that time, and that, at any rate, there was no warrant in the Constitution for the assumption of them by the national government. The plan seemed doomed to defeat, but was finally carried in a modified form by manipulation on the part of Hamilton. By a process of "log-rolling," well known to present-day politicians, Hamilton secured votes enough for the adoption of his plan of assumption. The seat of government had not yet been located permanently, and a controversy over the matter arose between the North and the South. Sectional claims and advantages were set forth with great zeal. The shrewd Hamilton saw an opening for a masterstroke. He agreed with Jefferson that he would favor the location of the capital on Potomac River in return for votes for his assumption plan. The matter was arranged in this way, although both measures were carried by narrow majorities.

Jefferson complained at a later time that he had been tricked by Hamilton, and that he did not understand the measure to which he had thrown his influence. If this was true, Jefferson certainly had no one to blame but himself. He was no novice in political manipulation, and should have been informed. It is difficult to see why he was not. However that may be, as a result of the bargain State debts to the amount of \$21,500,000 were assumed by the general government. Hamilton calculated that the entire debt of the States was about \$25,000,000. The exact indebtedness was not known. The law provided for the distribution of the \$21,500,000 among the various States in sums varying from \$4,000,000 to \$200,000. The question of the location of the capital was also settled. It was decided that the seat of the government should be at Philadelphia for ten years, and then be located permanently at some spot on the Potomac. Maryland and Virginia later ceded a tract of land for this purpose ten miles square on both banks of the river. The Maryland portion of the cession was occupied, and that on the southern side was ceded to Virginia.

Another part of Hamilton's comprehensive financial scheme yet remains to be discussed. In one of his reports to the House of Representatives, he spoke of a national bank as "an indispensable engine in the administration of the finances." In a separate report, presented to the House of Representatives on the 13th of December, 1790, he set forth his views *in extenso* in regard to this matter. A bank somewhat similar had been established under the Confederation in 1781, but was later reorganized under the State laws of Pennsylvania. Hamilton now proposed the establishment of another bank of a somewhat similar character to serve as an auxiliary to the treasury department.

The plan was modelled in a general way after that of the Bank of England. The capital stock was not to exceed \$10,000,000, and the indebtedness of the bank was never to exceed the amount of the capital stock. In case it did,

the directors were to be made legally liable. The interest on loans was to be limited to six per cent, and the treasury department was to be authorized to require statements of the bank's condition, but not oftener than once a week. The stock was to be transferable, and the United States government was to subscribe for an amount of this stock not exceeding \$2,000,000. The management was to be placed in the hands of twenty-five directors, and it was provided that a stockholder should be a citizen of the United States in order to be eligible to a position on the board of directors. Hamilton had a very definite idea of what the board should be and how it should be organized, and set forth his plan clearly and concisely in twenty-four sections of his memorable report.

It was argued that the bank would increase the productivity of the capital of the country by affording opportunities for good investments. It was also held that the bank would aid the government by means of loans in sudden crises, and by the collection of taxes. The notes, too, were expected to circulate as currency. Holland, England, and France had similar banks, and it was contended that they had proved their usefulness in these respects.

Hamilton presented the case of the bank with rare skill and force, yet his plan was not to be adopted without a strenuous contest. It aroused a very formidable opposition at the outset, and precipitated a debate which involved the entire question of the construction of the Constitution. A bill to establish the bank was introduced and its constitutionality was immediately challenged. The opposition both within and without Congress was fierce; and when the bill was passed by the two houses, the President was in doubt as to whether he ought to sign it or not. He accordingly asked the opinion of his Cabinet upon the constitutionality of the measure. Jefferson and Randolph held that the measure was clearly unconstitutional, while Hamilton and Knox took the opposite view. Jefferson and Hamilton set forth their views upon the matter in two of the most









John Marshall.

*After the original painting in possession of the  
Virginia Historical Society.*

## CHAPTER XI

### *POLITICAL PARTIES AND FOREIGN AFFAIRS*

It will be convenient to discuss, in connection with foreign affairs, the organization and early development of the political parties in the United States; since the attitude of these parties toward European nations constituted one of their fundamental differences. After independence had been achieved, it was unavoidable that the United States should come into contact, more or less close, with other nations. In fact, international dealings of importance had already been opened with some countries. An important treaty had been made with France in 1778, and its interpretation was now a matter of contention; the treaty of peace with Great Britain of 1783 was not being enforced in every respect; money was due to France and Holland; and there was a dispute with Spain in regard to the boundaries of Florida and the navigation of Mississippi River. The Barbary pirates, too, were not yet in a state of subjection. These various and important diplomatic matters demanded the attention of the government, and hastened the formation of party lines.

Before the Revolution the two political parties in America were the Whigs and the Tories—the same parties, naturally, which existed at that time in Britain. Of these the Whigs were largely in the majority. The colonists were, for the most part, dissenters in religion, and opponents of the old order of things in politics as well. Whig doctrines flourished in the new atmosphere. In 1775 Lord Chatham

referred to that "glorious spirit of *Whiggism*" which animated the Americans. It is estimated, however, that at the time of the Revolution about one third of the people were Tories and sympathized with Great Britain. These Loyalists were, for the most part, men of culture, education, and property, who looked with contempt upon the Revolutionary party. This party, with the exception of Washington and a few others, was by no means aristocratic, and the Continental Congress was denominated a crowd of "word-spouting cobblers and tinkers," who found "mending the State a more lucrative job than mending kettles and patching shoes." The Revolution, however, all but annihilated the Tories, and it left the Whigs supreme. From this time on, British issues no longer dominated American politics. Issues distinctively American in character began to divide the people into political parties. Questions both national and local demanded attention.

The first great question of a national character which divided the people into parties was the one regarding the adoption of a new and stronger form of government. This question gave rise, as was noted in the discussion on the ratification of the Constitution, to two parties,—the Federalists and the anti-Federalists. The Federalists were in favor of the adoption of the Constitution, and the anti-Federalists were opposed to such action. The Federalists favored a strong central government and looked upon the Articles of Confederation as hopelessly weak, while the anti-Federalists would exalt the States and allow the central government to remain in an enfeebled condition. The Federalists saw dissolution and anarchy in the old loose form of government, while the anti-Federalists saw tyranny and despotism in the new. The more influential and substantial classes were to be found, for the most part, in the Federalist party; but, as we have seen, the anti-Federalists were not without leaders of standing and ability.

The struggle of the anti-Federalists against the ratification of the Constitution has been discussed elsewhere and need

not be repeated here. It is sufficient to note that the adoption of the new form of government left its opponents without an issue. There was no longer any reason for the existence of the anti-Federalist party on the old platform. New issues, however, soon arose which caused a new alignment of political parties, though at the opening of Washington's first administration party lines were not clearly drawn. The Federalists were in control, but the anti-Federalists were no longer contenders. They had accepted the verdict of the people and were largely quiescent. They were, however, alert for criticism.

It is said frequently that the interpretation of the Constitution was the issue which caused the new alignment of political parties. It is said that Jefferson and his followers were in favor of construing that document strictly and literally, while Hamilton and his party advocated a more liberal construction; that Jefferson would restrict the powers of Congress to those specifically listed in the grant, and that Hamilton would include certain powers by implication. All this is true, but is only a part of the truth. The differences between the two schools of thought were more fundamental in character. The interpretation of the Constitution was a mere corollary to the main proposition. The fundamental difference between the two great leaders and their parties was a matter of temperament. Jefferson had an all-abiding faith in the integrity and wisdom of the masses; Hamilton had not. Jefferson believed that the common people were competent to control the government and by right should do so. To Hamilton the people were "a great beast." He would place the government in the hands of the select few. This does not mean that the masses of the people should be excluded entirely from participation in governmental affairs, but that the maximum of power should be conferred upon those men most favored by education and natural endowments. Hamilton would exalt the government; Jefferson, the individual; and as the State governments were nearer to the people than the general government,

Jefferson would retain their strength even at the expense of the national government. These differences, then, were fundamental in the dispositions of the two men and their followers. The origin of political parties in America must be sought herein rather than in an attitude toward any particular question. John Adams was correct when, in speaking of political differences in 1812, he exclaimed: "Alas! they began with human nature; they have existed in America from its first plantation." Adams also expressed a view quite characteristic of himself and Hamilton when he wrote in his *Defence of the American Constitutions*, in 1787: "The rich, the well-born, and the able . . . must be separated from the mass and placed by themselves in a Senate." Almost simultaneously Jefferson was writing: "I am persuaded that the good sense of the people will always be found the best army. They may be led astray for a moment, but will soon correct themselves." Jefferson's writings abound in such sentiments, while in those of Hamilton views of an opposite character are frequently expressed. In short, Hamilton was an aristocrat; Jefferson, a democrat.

Here, then, was the fundamental difference between the two great men and the two great parties which they were to organize. A strict construction of the Constitution followed logically from Jefferson's view, and a liberal construction from that of Hamilton. The matter of interpretation was incidental rather than fundamental. The political creeds of Hamilton and Jefferson made it imperative that each should assume the attitude which he did in regard to the construction of the Constitution.

Having observed the fundamental differences between the two schools of political thought, it will be interesting to note the development of these differences. Party lines were being slowly formed during the first administration of Washington, and the two new parties, the Federalists and the Republicans, were in active opposition during his second administration. Hamilton and John Adams were the leaders of the Federalists, while the Republicans looked to Jefferson as their chief.

These two new parties should not be looked upon as the survivals of the Federalists and the anti-Federalists of a few years before. They were the successors, simply. There had been a complete change in political issues, and the parties of 1793 did not stand for the principles advocated by the parties of 1788. It is a fact, however, that the majority of those who were Federalists in 1788 remained in that party at a later time; and that the Republican party was made up very largely of the anti-Federalists of former days.

It now remains for us to consider some of the more specific differences between the two great parties. In the first place, the Federalists supported Hamilton's financial measures as set forth in a previous chapter. To these measures the Republicans were opposed, for reasons previously indicated.

Again, in regard to matters of foreign policy there was a distinct difference between the two parties. The Republicans were imbued with the spirit of the French revolutionary philosophy of the eighteenth century. They were ardent advocates of the power of "the third estate." The Federalists, on the contrary, cared little for theoretical notions concerning the rights of man. The Republicans, then, were French in their sympathies, while the Federalists were British. This difference was intensified when war broke out between France and Great Britain in 1793. The Federalists favored the Jay treaty with Great Britain on the ground that it was the best obtainable at the time, and that a rupture with Great Britain was impolitic. The Republicans, on the other hand, opposed it because, as they said, it sacrificed our interests and indicated a spirit of craven submission to Great Britain. The Federalists supported the Proclamation of Neutrality issued by Washington in 1793, while the Republicans, as a rule, were incensed at the action. They favored France and considered the proclamation an act of the basest ingratitude toward that country. It may be well, however, to note, in passing, that Jefferson approved the proclamation, for the most part. Feeling between the



"French" and the "English" parties in America ran high. The Federalists were denominated "monarchists," "Anglo-men," and "stock-jobbers"; while they in turn looked upon the Republicans as an ignorant rabble likely to subvert the government, if given an opportunity. The two parties did not understand each other any better than Englishmen and Frenchmen have done. The inhabitant of France has always looked upon his neighbor across the channel as a stolid, stupid individual of coarse fibre and dull perceptions; while the Englishman, in turn, has regarded the Frenchman as a volatile, inflammable, and thoroughly unreliable sort of man. Neither has appreciated the good points of the other; but each has seen the weaknesses of the other greatly magnified. So it was with the Republicans and the Federalists. They honestly hated and distrusted each other. Each party believed that to turn over the government to the other meant national ruin. The distrust and hatred were intense and personal. This was evident in the storm of protest which came when Albert Gallatin, a man of foreign birth, who, it was said, had been "dancing around a whisky-pole" in Pennsylvania a few years before, succeeded Alexander Hamilton as secretary of the treasury. Further evidences of this mutual distrust and hatred will appear in the discussion of the Genet episode, which will be taken up presently.

It is interesting to note the alignment of the political parties from the standpoint of geography. Hamilton was supported by nearly all the New England men in Congress, by some of the representatives from the Middle States, and by a very few from the South. In general, it may be said that the commercial interests favored Hamilton, while the agricultural sided with Jefferson. Economic interests were not lost sight of. The city of Charleston, an important commercial centre, was strongly Federal, though the South as a whole was overwhelmingly Republican.

The appearance of party newspapers was almost simultaneous with the appearance of the parties themselves. Fenno's *Gazette of the United States*, the first founded, was

the champion of the Federalist cause, while the *National Gazette*, edited by Philip Freneau, was the exponent of Republican doctrine. These newspapers, particularly the latter, wielded a considerable influence and deserve more than a passing notice.

Philip Freneau, "the Poet of the Revolution," was born of Huguenot parents, in the city of New York, in 1752. At seventeen he wrote a political *History of the Prophet Jonah*, and at nineteen was graduated from the College of New Jersey, now Princeton University. There were eight members in his class, and six of these, including James Madison, subsequently became famous in various lines. During the Revolutionary War, and also while the War of 1812 was in progress, Freneau sang like Tyrtæus of old. When Paul Jones, of the *Bon Homme Richard*, defeated Captain Pearson, of the *Serapis*, Freneau wrote :

"Go on, great man, to scourge the foe,  
And bid these haughty Britons know  
They to our thirteen states shall bend;  
The stars that veiled in dark attire  
Long glimmered with a feeble fire,  
But radiant now ascend."

To him Cornwallis was "the plundering servant of a bankrupt king," and an especial object of hatred. After his departure for England in 1781, Freneau hurled a brutal poem after him, from which the following lines are taken :

"Now curst with life, a foe to man and God,  
Like Cain, we drive you to the land of Nôd;  
He with a brother's blood his hands did stain,  
One brother he,—you have a thousand slain."

By 1791 Freneau had attained a considerable reputation as a poet, a patriot, and an expounder of Republican doctrine. These qualities, perhaps the latter in particular, commended him to Jefferson, Madison, and other Republican leaders. Jefferson was particularly anxious to have

Freneau come to Philadelphia, the seat of the government, and set up a paper to combat the "Toryism" of Fenno's *Gazette*. He even held out some rather extraordinary inducements to that end. On February 28, 1791, he offered to Freneau "the clerkship for foreign languages" in the state department, at a salary of \$250 per year. "The salary, indeed, is very low," Jefferson wrote, ". . . but also it [the clerkship] gives so little to do as not to interfere with any other calling one may choose, which would not absent him from the seat of government. It requires no other qualification than a moderate knowledge of French. Should anything better turn up within my department that might suit you, I should be very happy to bestow it as well . . ." The inducement, apparently, was not sufficiently alluring, and Freneau did not accept the proffered appointment at once. On May 15th following, Jefferson said in a letter to Thomas Mann Randolph: "We hoped at one time to have persuaded Freneau to set up here, but failed." He did not relax his efforts in this direction, however, but sought through Madison and others to induce Freneau to come to Philadelphia. General Henry Lee used his influence to this end also. He promised his assistance in getting subscribers for the paper, and is said by some to have advanced the money at a later time for its establishment. Freneau still held back. He said that he did not feel competent to translate English into French, which he thought he might be required to do. Madison set his mind at rest by telling him not to take the matter too seriously. Jefferson was loath to give him up, and on July 21, 1791, he wrote again to Madison as follows: "I should have given him [Freneau] the perusal of all my letters of foreign intelligence and all foreign newspapers, the publication of all proclamations and other public notices within my department, and the printing of the laws, which, added to his salary, would have been a considerable aid." The result was that Freneau accepted the clerkship, came to Philadelphia, and established his paper, the *National Gazette*, which for two

years was the recognized organ of the Republican party. During these two years his pen was a thorn in the side of the Federalists. In many instances his caustic utterances stung Hamilton almost to desperation. It is true that Fenno attempted to retort in kind, but he was no match for Freneau in this species of political warfare.

The *National Gazette* was published every Monday and Thursday. It supported the Republican party and was broadly democratic. It was an ardent advocate of the principles of the French Revolution. The theories of liberty, fraternity, equality, and atheism appealed to its enthusiastic editor. The doctrines of Tom Paine and Rousseau were expounded and endorsed. There was, too, a real need for an opposition paper at the time. There was a tendency in the government toward excessive centralization, and Fenno was completely under the domination of Hamilton and the leading Federalists. His language was often that of a sycophant. In speaking of Hamilton he said: "He is the highest jewel in Columbia's crown. As a pillar in the Federal building he seems to unite the solidity of the Doric order, the delicacy and elegance of the Ionic, and the towering beauty of the Corinthian." His paper was also aristocratic, and even courtly in tone. This characteristic was ridiculed by Freneau without mercy. Fenno delighted in the publication of news items relating to the aristocratic set, and in prefixing titles to the names of persons of prominence in Philadelphia and elsewhere. In ridiculing this tendency, Freneau published in his paper a series of news items as they might be expected to appear in Fenno's paper ten years hence. The following is a sample: "Yesterday came on before the circuit court of the Protector, the trial of James Barefoot, laborer, for carelessly treading on the great toe of My Lord Ohio. The defendant was found guilty, but as the offense appeared quite accidental, and his lordship had already inflicted on him fifty lashes, the court fined him only one hundred pounds and ordered him to be imprisoned six months. Considering the blood and rank

of the Prosecutor, the humanity of the sentence cannot be too highly extolled. His lordship's toe is in a fair way of recovery, although one of his physicians thinks the nail is in danger."

In addition to attacking the foibles of Fenno's paper, Freneau made war upon the policies and principles of the Federalist party. Hamilton was the favorite object of attack. Fenno, of course, came to the defence, but was not particularly effective. Failing in argument, he resorted to abuse. He called Freneau a "spaniel," a "fawning parasite," a "grumbletonian," a "Bedlamite," a "salamander," a "jackal of mobocracy," and hurled other choice epithets at him from his armory of billingsgate. Freneau said little in direct reply to these attacks, but continued to irritate his adversary in prose and verse. In one issue of his paper he said:

"One Printer for Congress (some think) is enough  
To flatter and lie, to palaver and puff,  
To preach up in favor of monarchs and titles,  
And garters and ribbands to prey on our vitals."

When it became evident that the Republicans were getting the better of the unseemly contest, Hamilton took up the cudgel and delivered some telling blows. He wrote an article for Fenno's paper over a *nom de plume*, in which he made an attack, not on Freneau, but on Jefferson. He ignored the former as a mere tool, and accused Jefferson of using the patronage of the government to support a party paper. He declared that Freneau was not competent for the work which he was expected to do and that his services were not needed in the department. He made a rather strong argument along this line. The ethics of this whole controversy has been discussed again and again, and there is really nothing new to add. One regrets that it ever took place. The recriminations of this period add nothing to the fame of either Hamilton or Jefferson. Both men betrayed a weakness and a littleness by deigning to enter such an undignified scrimmage. Judged by an absolute ethical

standard, Jefferson must be condemned for his part in the establishment and maintenance of Freneau's *Gazette*. Judged by a comparative standard,—if there can be such a thing,—he did not seriously offend. Both the papers were, in a sense, subsidized; but Fenno's was supported in a manner somewhat less objectionable. He undoubtedly received financial assistance from the leading Federalists, but it does not appear that any of it came from the treasury of the United States. Fenno appears to have asked aid from Hamilton, and the latter wrote a letter to Rufus King asking him to raise \$1,000 in New York, while he [Hamilton] would attempt to secure a like sum in Philadelphia. These sums were to relieve the financial distress of "poor Fenno," as Hamilton called him.

Freneau's *Gazette* was not long-lived. In 1793 yellow fever broke out in Philadelphia and demoralized business, and the resignation of Jefferson from the state department deprived Freneau of the clerkship and patronage. Inasmuch as he was not a good financial manager, these untoward circumstances caused him to suspend the publication of his paper after an existence of about two years. He was only forty-one years of age at the time and lived on to be the "Poet of the War of 1812," as well as that of the Revolution. He died in 1832, in poverty, at the age of fourscore. The manner of his death was pathetic and tragic in the extreme. It was his custom to gather with congenial spirits at the circulating library of his home town to discuss politics and other matters. On the evening of December 18, 1832, he remained later than usual and perished in a snowstorm while on his way home. A writer in the *New Bedford Mercury*, 1884, gives the following account of his death: "He crossed a bog-meadow to shorten the distance. The blinding snow bewildered him and he lost his way and sank in the morass. He succeeded in getting out and gaining dry ground, but in attempting to climb a fence he fell and broke his hip. When he was discovered he was lying under an apple tree at the edge of the meadow—dead."

The career of Philip Freneau has been the subject of violent discussion. He has been roundly condemned for his politics and his religion. He was objectionable alike to the Federalism and the Puritanism of New England. In speaking of the Puritan Sabbath he says:

"This day was the mournfullest day in the week ;  
Except in religion none ventured to speak.  
This day was the day to examine their lives,  
To clear off old scores and preach to their wives."

A religious scoffer and a French enthusiast could not fail to arouse violent antagonism. This he did; and while, no doubt, many of the strictures are justifiable, he was not the "reptile journalist" and the "barking cur" described by Goldwin Smith and Washington Irving. He was more than a "democratic scribbler." His influence upon the times in which he lived was strong and often wholesome. His career, however, seems to be one concerning which it is difficult to write dispassionately. In a recent number (1902) of the *Johns Hopkins Studies*, Mr. Samuel E. Forman has a monograph entitled *The Political Activities of Philip Freneau*. In this monograph Mr. Forman protests against the injustice which has been done to Freneau by historical writers. The main point of the protest is well taken, but the writer goes too far in the opposite direction. He seeks to place his hero on a pedestal. Jefferson is also exalted, unduly, as it would seem, and Hamilton is correspondingly debased.

A few months before the cessation of the *National Gazette* a war broke out between Great Britain and France as a result of the French Revolution. This served to intensify party feeling in the United States. The partisans of the two countries became unusually active. The Republicans pressed the claims of France with vehemence. It was shown that she had aided the colonies with men and money during their war with Great Britain, and it was held that the treaty of 1778 with France bound us to aid that country as against

Great Britain. The French Revolution, too, was considered by many to be due largely to American example. Many Republicans saw in this revolution the adoption of Jefferson's principles of "human liberty" and the "rights of man." It was contended that every feeling of justice and gratitude must impel the Americans to aid their benefactor, France, in her war with England. The Federalists, however, were more conservative. At the beginning of the French Revolution they had sympathized with that movement, but the recent Reign of Terror had convinced them that it was not safe to vest power in the masses. They entertained feelings somewhat similar to those which Burke had recently expressed in his *Reflections* on the French Revolution. They had more faith in the Anglican than in the Latin element. With them blood was thicker than water. Then again, they began to reckon the cost of an alliance with a European power. They felt that the United States was not powerful enough to hazard the danger of a war. In such an event the income derived from customs duties would be curtailed; American ships would be liable to capture; and the lucrative trade with the West Indies would cease. The idea of preserving the national integrity was uppermost in their minds. The sentimental phase did not appeal to them. They favored Great Britain, but were not so ardent in their favoritism as the Republicans were in the case of France.

Party feeling was intensified still further by the arrival in this country of Edmond Charles Genet, the French minister. Genet had been a precocious youth,—a translator and an editor at the age of twelve,—and had had considerable diplomatic experience before coming to the United States. He arrived on the 8th of April, 1793, and, presuming upon the sympathies of the American people, began to enlist men, to commission privateers, and to bring prizes into American ports for condemnation, which had been taken in American waters. He was acting as he might have done on French soil—and all this without presenting his credentials



to the President. His reception by the people must have emboldened him to continue in his high-handed course. He was received with great acclaim, and clubs were formed in various localities, particularly in the West and South, to further the cause of France. These clubs copied the absurdities of the Jacobin clubs of France and went to the most ridiculous extremes in dress and ceremonies. Genet was entertained at banquets, the *Marseillaise* was sung in his honor, the liberty cap was passed around, the memory of the late King of France was most grossly insulted, and in one instance, at least, a picture representing the mangled corpse of Queen Marie Antoinette, was exposed to view. Even at Philadelphia, he was welcomed with bells, guns, and a banquet, before he had presented his credentials to Washington. When he did finally present his credentials, on April 19, 1793, he was received by the President with a dignified reserve. His interview was not reassuring, but, deluded by evidences of popular approval, he continued his course. He ignored the explicit orders of the government and expressed his determination to appeal from the government to the people. Chief Justice John Jay and Senator King asserted over their signatures that Genet had expressed himself to this effect. The result of this announcement was immediate. All but his most violent friends deserted him, and his recall was asked for and cheerfully granted. This latter step was determined upon early in August, 1793, and his successor arrived in February of the following year. Genet settled in the State of New York, married the daughter of Governor George Clinton, devoted his attention to agricultural pursuits, and died in 1834.

The declaration of war and the appearance of Genet made it imperative that the United States should state her position as regards the two rival powers. The news that war had been declared reached America on April 5, 1793, and three days later Genet arrived and entered upon his fatuous course. Washington was at Mount Vernon at the

time, and, appreciating the gravity of the situation, he called a meeting of the Cabinet for April 19th. He sent a circular letter to the members and inclosed a list of thirteen questions, prepared by Hamilton, for their consideration. The substance of the more important of these questions may be stated thus: Shall a proclamation be issued? Shall a French minister be received? Are the treaties with France now in force? If so, are they applicable to a defensive war only, or to an offensive war as well? Is the present war offensive or defensive on the part of France, or is it mixed? It was decided unanimously by the Cabinet that a proclamation should be issued and that a French minister should be received. Decision on the remaining questions was postponed. Randolph was accordingly directed to draft the proclamation. This was done; and after approval by the Cabinet, it was signed and ordered published by the President on the 22d of April, 1793. The famous document is short and to the point, containing less than a single page of printed matter. In it the President declared that the United States would "with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent Powers." The citizens of the United States were exhorted and warned "carefully to avoid all acts and proceedings whatsoever, which may in any manner tend to contravene such disposition." They were also warned that in case they transgressed the law of nations they would not receive the protection of the United States. The proclamation has always been called one of "neutrality," and it was such essentially; but the word "neutrality" does not appear in it. It was probably intentionally omitted, as it was objectionable to Jefferson. A proclamation of neutrality was certain to arouse the antagonism of the French enthusiasts in America, and this Jefferson had no desire to do. He believed, apparently, that a neutral attitude was the only safe one for the United States to assume, but he did not desire to declare that attitude in set terms. He was naturally not so enthusiastically in favor of the neutrality

idea as Hamilton and Washington were. He must have looked upon the proclamation as a necessary evil.

The status of the treaty of 1778 with France was an important matter, and was one of the points raised in Washington's list of questions to the Cabinet. In regard to this, Hamilton and Jefferson disagreed. Hamilton considered that the treaty had been abrogated by the change of government in France from a monarchy to a republic, while Jefferson contended that the treaty was still binding. The text of the treaty was also obscure, as was indicated by Washington's questions. One section, the second, seems to limit the liability of the United States to the then existing war between Great Britain and the United States; while in another, the eleventh, the two parties agreed to "guaranty mutually from the present time and forever, against all other powers," their respective territories. Upon the question of the validity of the treaty the Cabinet was divided. Jefferson wrote later that Hamilton considered the treaty void, and Knox, he continues, subscribed to this view, "acknowledging at the same time, like a fool as he is, that he knew nothing about it. I was clear it remained valid." Randolph at first favored Jefferson's view, but, after hearing Hamilton's argument, took further time to consider the matter. Notwithstanding this difference of opinion in regard to the treaty, it was unanimously agreed by the Cabinet that a proclamation should be issued. However, when the proclamation appeared it was very distasteful to Jefferson. "I dare say," he wrote to Madison, "you will have judged from the pusillanimity of the proclamation from whose pen it came." And again he wrote: "The instrument was badly drawn, and made the President go out of his line to declare things which, though true, it was not exactly his province to declare. The instrument was communicated to me after it was drawn, but I was busy, and only ran an eye over it to see that it was not made a declaration of neutrality, and gave it back again, without, I believe, changing a letter."

Dear Sir

Paris Jan. 12 1785

Your favour of June 1 did not come to hand till the 3<sup>d</sup> of September. I immediately made enquiries on the subject of the private you had authorised your relation to sell to this government, and I found that he had long before that sold her to government, and sold her very well as I understood. I noted the price on the back of your letter which I have since unfortunately mislaid so that I cannot at this moment state to you the price. but the transaction is of so long standing that you cannot fail to have received advice of it. I should without delay have given you this information but that I hoped eventually to be able to accompany it with information as to the result which was another object of your letter thus the it has been pressed by our S<sup>r</sup> John and also by the M. de la Fayette. since his return from Berlin, has been upon a great length & at last they have only decided to send to you for sample of the wood. Letters on this subject from the M. de la Fayette accompany this.

Every thing in Europe is quiet, & promises quiet for at least a year to come. we do not find it easy to make commercial arrangements in Europe. there is a want of confidence in us. this country has lately reduced the duties on American shale-oil to about a guinea & half the ton, and I think they will take the

3 May 1785 G<sup>o</sup> Greene

Letter from Jefferson relating to foreign trade. From the original in possession of the Historical Society of Pennsylvania.

greatest part of that we can furnish. I hope therefore that this branch of our commerce will resume it's activity. Portugal shows a disposition to court our trade, but this has for some time been discouraged by the hostilities of the pyrratical states of Barbary. The Emperor of Morocco who had taken one of our vessels, immediately consented to suspend hostilities, & ultimately gave up the vessel, cargo & crew. I think we shall be able to settle matters with him. but I am not sanguine as to the Algerines. They have taken two of our vessels, and I fear will ask such a tribute for a <sup>most</sup> in-bearance of their practices as the U.S. would be unwilling to pay. When this idea comes across my mind my feelings are almost entirely suspended between indignation & impotence. — I think whatever sums we are obliged to pay for freedom of navigation in the Mediterranean seas, should be turned on the European commerce with us, by a separate impost. That these powers may see that they protect these enormities for their own sakes.

I have the honor to be with sentiments of the most perfect esteem & respect Dear Sir

Yours most obedient

and most humble servant

W. E. Johnson

It might be remarked incidentally that the authorship of the proclamation has been variously ascribed by historical writers to Randolph, Jefferson, and John Jay. It seems clear, however, that the document was drafted by Randolph. Jefferson is very specific on this point. On July 14, 1793, he said in a letter to Colonel Monroe that it was "E. R. who drew it." This statement is abundantly corroborated by other evidence.

The publication of the proclamation had a marked effect. It took place seventeen days after the news of the Franco-British war came to America, and fourteen days after the arrival of the French minister, Genet. It was a death blow to all the plans of the French representative. Genet was incensed, and the pro-French press became violently abusive. Even Washington was assailed and denounced as an enemy of republican principles and a usurper of the powers of Congress. In some instances the Federalists retorted in kind. Fisher Ames speaks of the French party of this period as "Salamanders that breathed only in fire, as toads that sucked in no aliment from the earth but its poison, as serpents that lurked in their places the better to concoct their own venom." The proclamation aroused bitter antagonism, but it was, nevertheless, a necessary, wise, and statesmanlike measure.



## CHAPTER XII

### *THE JAY TREATY*

THE relations of the United States with Great Britain during Washington's administrations were delicate and at times critical. The treaty of 1783 was not conclusive. It left several important questions unsettled, and some of its essential provisions, as we have previously noted, were being violated. The government of the United States under the Articles of Confederation was able neither to fulfil its own treaty obligations nor to compel Great Britain to fulfil hers. Many grievances were thus allowed to go by default. In the meantime, the relations between the two countries were becoming more and more strained; the government of the United States had been perceptibly strengthened since 1789, and the necessity for a new treaty became obvious.

The outbreak of the war between France and Great Britain in 1793 aggravated the difficulty. In addition to the non-fulfilment of her treaty obligations, Great Britain began an unpardonable series of aggressions upon American commerce. France offended in a similar manner, though not to so great an extent. Both countries insisted that provisions were "contraband of war," and hence liable to seizure. This doctrine worked a great hardship upon American vessels loaded with grain, which was the leading export. The United States held that only military and naval supplies were "contraband of war," and that vessels carrying provisions should not be molested. France and Great Britain also held that after notice of the blockade of a port was given,



vessels bound for that port were liable to seizure anywhere upon the high seas. The United States insisted that in such a case the blockade must be actual and not on paper. Again, France and Great Britain insisted upon the enforcement of the "Rule of 1756," which provided that when trade with colonies was prohibited in time of peace it should not be carried on by neutrals in time of war. This proposition was also denied by Americans, who declared that Great Britain should not interfere with their trade with the French and Spanish colonies. France and Great Britain also insisted that ships containing goods which were the property of the enemy were liable to capture. The American position was that "free ships make free goods," and that a neutral vessel was not liable to seizure under such circumstances. Both France and Great Britain began their depredations upon American commerce upon the above pretexts, and our trade suffered greatly. American merchant ships were being seized constantly and were safe nowhere. With each new seizure indignation ran higher. Feeling against Great Britain was especially intense, as her cruisers were more numerous than those of France, and hence effected more captures. In addition to this, she insisted upon the odious practice of "impressment." American vessels were stopped upon the high seas and searched for seamen of British birth. If such were found, they were seized and impressed into the British service. Naturalization rights were disregarded, and in many instances native-born Americans were pressed into the service of Great Britain. This practice added national humiliation to national injury, and stirred the government and the people to action. On September 16, 1793, Jefferson called the attention of Congress to this state of affairs, and advised retaliation. The national humiliation of impressment and the commercial losses incident to capture had well-nigh exhausted the patience of the people. The New England fishermen and ship owners wanted war declared against Great Britain, and so did the French clubs. Opposition to England was fundamental

in their political creed. Many, too, were incensed at the actions of France. Her offences against our commerce were different in degree, but not in kind. Even Jefferson was no longer the ardent advocate of French principles which he once was. Since the usurpations of Napoleon Bonaparte, his attitude toward France had been radically changed. "As for France and England," he wrote, "with all their prominence in science, one is a den of robbers, and the other of pirates."

The important question now was: Should the United States declare war against Great Britain, or France, or both; or should an effort be made to bring about a peaceful adjustment of the difficulty? Washington's voice and influence were for peace. "Peace," he declared, "ought to be pursued with unremitted zeal before the last resource, which has so often been the scourge of nations, and cannot fail to check the advancing prosperity of the United States, is contemplated." He was right. "War would have been justifiable, but the great interest of the nation was peace." War at that time would have been equivalent to national suicide. The United States was in no sense prepared for such a contest with either France or Great Britain. She had no army or navy, and her resources were exceedingly slender. Then, too, there was a conspicuous lack of national unity. She could not have presented a united or enthusiastic opposition to either country.

On March 26, 1794, an embargo for thirty days was laid prohibiting the departure of vessels from American ports, and on April 17th a resolution of non-intercourse with Great Britain was introduced in Congress. The country was trembling on the verge of war, when Washington declared his intention of appointing John Jay an envoy extraordinary to Great Britain to make one more attempt at a peaceful settlement of the difficulties.

In such a critical state of affairs as this, it was essential that the negotiator be selected with great care. Mr. Thomas Pinckney, United States minister at London at the time,

although a man of good ability, was a French sympathizer, and hence not eligible. Hamilton was Washington's first choice for the mission, but it was readily seen that his enemies were too numerous and too vindictive. James Monroe warned Washington against his appointment, and the probability is that it would not have been confirmed if made. Hamilton proposed Chief Justice John Jay, and Washington acquiesced. Jay was appointed on the 16th of April, 1794, and confirmed by the Senate, after three days of angry debate, "by a great majority," as Jay put it in a letter to his wife. "Mr. Burr," he continued, "was among the few who opposed it." In spite of this appointment, the non-intercourse bill aimed at Great Britain was passed by the House of Representatives, and was defeated in the Senate only by the casting vote of the vice-president, John Adams.

Jay had had experience in diplomatic affairs, and was a man of the highest character and most spotless integrity. His appointment, nevertheless, was vigorously assailed. The Francomaniacs were opposed to the Federalists and to Great Britain on general principles. It was said that the office was incompatible with the one which Jay held at the time of his appointment; that he was monarchical in tendency and a lover of Great Britain; and that he was not alert in regard to the navigation of the Mississippi. Jay clearly saw the unpopularity which would of necessity follow, but thought it to be his duty to accept the mission. He said the appointment was "not to be desired, but to be submitted to." John Adams thought the main opposition to Jay was due to the fact that he might be successful in the undertaking and become a candidate for the presidency to the exclusion of Jefferson. His biographer, George Pellew, also remarks, in concluding his discussion of the mission to Great Britain: "He had at least done his duty, though by so doing he very possibly lost the Presidency of the United States." It is very plain that he did his duty, but not at all clear that he lost the presidency thereby. He probably could not have displaced Adams in the fall of 1796, and

the Federalist party never had a chance of success in any presidential election thereafter.

The main objects of Jay's mission to Great Britain have been stated above, but perhaps a more specific enumeration of the points at issue between the two countries may add definiteness to the discussion. In the first place, Great Britain still held the western posts, in opposition to the treaty of 1783; the negro slaves which were carried away by the British on their departure had not been paid for; the boundaries of the United States on the west and the north-east remained unsettled; and Great Britain complained that some of the States had put legal impediments in the way of the collection of British debts. All these points were relics of the Revolution. In addition to these, the Franco-British War of 1793 added new grievances. Great Britain complained that French privateers had been fitted out in American ports and had damaged her commerce, while the United States claimed damages for the irregular and illegal capture of her merchant ships by British cruisers. She also protested against the British policy of impressment. In addition to the settlement of these difficulties, a commercial treaty with Great Britain was thought desirable.

The official instructions to Jay came from Edmund Randolph, the secretary of state, under date of May 6, 1794. These were very general in character, and were styled "recommendations" to be modified by Jay at his discretion, except in one respect which was declared "immutable." "The Government of the United States will not derogate from our treaties and engagements with France." Randolph thought it possible to keep faith with both countries and to be honest toward both. The tone of the instructions was sane and pacific. Jay was urged "to repel war, for which we are not disposed, and into which the necessity of vindicating our honor and our property may, but can alone, drive us; . . . and at the same time to assert, with dignity and firmness, our rights, and our title to reparation for past injuries." He was informed that one of the causes

of his mission was "the vexations and spoliations committed on our commerce by the authority of instructions from the British Government," and that a second cause, "but not inferior in dignity to the preceding, though subsequent in order, is to draw to a conclusion all points of difference between the United States and Great Britain, concerning the treaty of peace." The taking up of the matter of a commercial treaty was left to the discretion of the envoy. Randolph then set forth in nineteen propositions the "general objects" of such a treaty. The most important of these propositions were that "free ships make free goods"; that provisions were not to be considered "contraband of war," except in very rare instances; that "no stipulation whatsoever is to interfere with our obligations to France"; and that the treaty was not to continue longer than fifteen years. Provisions were also suggested for "reciprocity in navigation" and for the security of neutral commerce. It was declared desirable that a blockade be defined and that citizens of the United States be given access to fishing grounds "now engrossed by the British." The instructions, on the whole, were skilfully drafted, and show the confidence which the administration reposed in John Jay.

The negotiations on the part of the British were carried on by Lord Grenville, the secretary of state for foreign affairs. Grenville and Jay were patriotic and high-minded men and got on together admirably. There was no attempt at bullying, browbeating, or trickery on either side. A spirit of candor pervaded the negotiations. Said Jay in a letter to Grenville: "This is not a trial of diplomatic fencing, but a solemn question of peace or war between two peoples, in whose veins flowed the blood of a common ancestry . . ." Grenville was equally candid. He remarked, in a letter to Jay in 1796, that he had no thought to settle the matters in dispute "on any other footing than that of mutual justice and reciprocal advantage." The two men were different, of course. They saw matters from different viewpoints; yet each was sincere in his convictions.

The negotiations were opened with informal conversations between Jay and Grenville. In this way each man got a general understanding of the views of the other. Then more formal but unofficial notes passed between them, and so the work progressed until the final draft was made. Clerks and copyists were dispensed with, so that publicity might be avoided. Jay appreciated the value of this latter precaution, as isolated articles of the treaty would be criticised unjustly by his opponents.

An analysis of the treaty itself will facilitate our subsequent investigations. It was stated in the preamble that the purpose of the treaty was "to produce mutual satisfaction and good understanding; and also to regulate the commerce and navigation between their respective countries, territories, and people, in such a manner as to render the same reciprocally beneficial and satisfactory."

After further declaring for "a firm, inviolable, and universal peace, and a true and sincere friendship," between the two nations, the specific matters of disagreement were taken up in order. It was agreed, first of all, that "His Majesty" should "withdraw all his troops and garrisons from all posts and places within the boundary lines assigned by the treaty of peace to the United States." This evacuation was to take place on or before June 1, 1796. It was further provided that all dwellers within these posts should be protected, and should be allowed one year after the evacuation in which they might elect to become citizens of the United States or to remain subjects of Great Britain. All persons remaining within the posts beyond the allotted time were to be considered citizens of the United States.

The boundary line on the northwest was still uncertain, and an attempt was made to adjust the matter at this time. The treaty of peace of 1783 had specified that the northern boundary should be a line drawn due west from the Lake of the Woods. Mississippi River was the western boundary; and the location of the source of the river not being known, it could not be ascertained whether the line due

west from the Lake of the Woods intersected the river or not. To clear up this uncertainty, it was agreed that the two nations should make "a joint survey of the said river from one degree of latitude below the Falls of St. Anthony, to the principal source or sources of the said river."

It was also provided that five commissioners should be appointed to adjudicate the British claims for money due from citizens of the United States. The findings of these commissioners were to be final "both as to the justice of the claim, and to the amount of the sum to be paid to the creditor or claimant." In case the recovery of the debts had been made impossible by "lawful impediments," the United States agreed to "make full and complete compensation" to the creditors.

Damages for "illegal or irregular" captures of merchant ships, by either nation, were to be adjudicated by five commissioners, in the manner indicated above, and "full and complete compensation" was to be made.

It was also agreed that debts due from individuals of one nation to those of another should never be "sequestered or confiscated" . . . "in any event of war or national differences between the two powers."

The rights of a neutral ship in time of war were discussed at length. It was finally decided that if a vessel having goods belonging to an enemy on board should be captured, it was lawful to make these goods prize; but that the ship should be allowed to proceed with the remainder of her cargo without impediment.

"Contraband of war" was defined very comprehensively to include all military and naval stores and supplies. Provisions, also, in some cases were considered contraband; but when so classified were to be paid for upon seizure.

The twelfth article was the one around which the fiercest of the controversy was waged when the treaty came up for ratification in the United States Senate. This article specified that the ports of the West Indies were to be open to American vessels, if under seventy tons, but on the

condition that "the United States will prohibit and restrain the carrying any molasses, sugar, coffee, cocoa, or cotton, in American vessels, either from his Majesty's Islands, or the United States, to any port of the world, except the United States, reasonable sea-stores excepted." The opposition to this article was so determined, that it was suspended by the Senate of the United States, and Great Britain agreed to the suspension.

The treaty was quite comprehensive in scope, and contained clauses in regard to the appointment of consuls, opposition to piracy, and extradition for murder and forgery. There were, however, some notable omissions. No indemnity was provided for the negro slaves which were carried away by the British. Lord Grenville held that the negroes were free forever and ceased to be property when once they were within the British lines. Jay was an ardent anti-slavery man, and probably could not assail his position with a clear conscience. At any rate, the claim for indemnity was waived. In the second place, there was no article in the treaty against impressment of seamen. Jay urged the matter strongly, but to no avail. Even after the treaty was ratified, Jay took up the matter again with Grenville and attempted to convince him that something should be done "to prevent, as far as possible, those very exceptionable impressments, and other severities, which too often occur." Grenville, however, would not concede the point. The treaty was signed on the 19th of November, 1794, and duplicate copies of it were at once transmitted to the United States. Congress was in session at the time, and it was hoped that the document might reach Philadelphia soon enough for consideration before the adjournment on the 4th of March following. One copy was intrusted to the care of Captain David Blaney, and he was instructed to proceed with all possible haste to Philadelphia. The journey was quite eventful. Contrary winds delayed the arrival of the ship, and at one point it was boarded by the French, and a fruitless search was made for the document. The ship



finally arrived at Norfolk at ten o'clock at night, and Captain Blaney set out at once for Philadelphia, on horseback, with the treaty. He made the journey, after many mishaps and hardships, in seven days, and arrived in Philadelphia with his feet and one hand frozen. He was too late, however, as Congress had adjourned three days before his arrival. His attempt, nevertheless, was a heroic one. A special session was necessary for action upon the treaty.

The treaty was submitted to the Senate on June 8, 1795, and was debated vigorously until the 24th. The Republicans made a determined attack upon it. They held that the evacuation of the western posts was put off too long, and complained because, in the meantime, the British traders were allowed to remain within the posts, while Americans were excluded. Jay explained that the British traders had goods scattered about over a large area of territory, and also had many debts to collect before their departure. It was necessary, therefore, to allow a considerable time for the closing up of their business matters. The Republicans also held that the prohibition upon the confiscation of debts in time of war was unjust. They held that the power to confiscate debts was necessary to the protection of the United States. Jay contended, however, that the clause would aid American borrowers by making it easier for them to obtain loans. The fact that indemnity for the negroes was not obtained was noticed, and objection was made to the holding of land by aliens within the United States. It was also held that the trade with the East and West Indies was so limited as to leave the United States really worse off than before; and objection was made that the extension of "contraband of war" to include provisions would injure American commerce by imperilling food stuffs at sea. The fact that provisions when thus seized were to be paid for was not given due weight by the Republicans. Article twelve, above mentioned, was vigorously assailed, and with good reason. The articles specifically mentioned were the products of the West Indies, but cotton was becoming an

important export of the United States, and a prohibition placed upon the exportation of this commodity would have been intolerable. Again, as noted above, the absence of a clause regulating impressments was the subject of adverse comment. The British were immovable in this respect, however, and the War of 1812 was necessary to remove the grievance. Even at the close of that contest, there was no formal renunciation of the policy. On June 24, 1795, the treaty, with the exception of article twelve, was ratified by a vote of twenty to ten—a strict party vote. The discussions were held in executive session, and the Senate voted, two days after the ratification, not to disclose the contents of the treaty for the present. Three days later, however, the *Aurora*, published by Benjamin Franklin Bache, contained a fairly accurate synopsis of the document. Thereupon, Senator Stevens Thompson Mason, of Virginia, sent a complete copy of the treaty to Bache, with a note to the effect that he might use it as he saw fit. He published it, of course, very promptly; and on July 2, 1795, the complete contents of the treaty were disclosed. Senator Mason, who is not known to fame in any other connection, said that he was greatly disturbed by the errors which appeared in Bache's synopsis of the treaty and determined that the document should be no longer withheld. He was immediately either a hero or a renegade, according to the point of view.

The expression of popular opposition to the treaty was not delayed, however, until its contents were known. The very project of a British mission was unreservedly denounced, and attacks were made upon the character and motives of John Jay from the very day of his appointment. His departure for England was made the occasion of a furious outburst of opposition. In June, 1795, before the publication of the treaty, an effigy of Jay was placed in a pillory at Philadelphia. To it were attached a rod of iron, a copy of Swift's speech on British depredations, several formidable Latin quotations, and John Adams's *Defense of the American Constitutions*. The whole was highly significant—or intended

to be so. After receiving the scorn of the passers-by for a time, it was beheaded in a guillotine, set on fire, and blown to atoms by powder that had been stored within it.

The celebrations held on the 4th of July were greatly influenced by opposition to the treaty. Many of these celebrations were made the occasions for insult to the British, to Jay, and to the Federalists in general. Various allusions were made to the matter in the addresses, and the banners and transparencies were teeming with opprobrious epithets. The taverns were crowded with boisterous revelers antagonistic to the presidential policy. Toasts were drunk and malicious puns were made on the name of Jay. "Perpetual harvest to America; but clipt wings, lame legs, the pip, and an empty crop to all Jays."

Some of the newspapers also became violently abusive. One issue of May 25, 1795, contained the following outburst: "John Jay, ah! the arch traitor—seize him, drown him, hang him, burn him, flay him alive! Men of America, he betrayed you with a kiss! As soon as he set foot on the soil of England, he kissed the Queen's hand. He kissed the Queen's hand, and with that kiss betrayed away the rights of man and the liberty of America." Such senseless and abusive paragraphs were not uncommon.

Party opposition was intense for several months. Jay was maligned; Washington was abused; Hamilton was stoned at a public meeting; and the British flag was dragged in the dust. Angry mobs paraded the streets of New York and Boston, and the House of Representatives refused to pass a resolution expressing "undiminished confidence" in the President. In the streets of Philadelphia, a life-size transparency of Jay was displayed with a pair of balances in the right hand, and American liberty in one scale-pan and British gold in the other. The latter was represented as outweighing the former. In the left hand was a copy of the treaty, and he was represented as saying: "Come up to my price, and I will sell you my country." Never was stricture more unjust. There is no purer or nobler man in

all the history of America than John Jay. Instead of selling himself for British gold, he absolutely refused any compensation whatever from the government of the United States, on the ground that he was sufficiently compensated by his salary as chief justice.

The signing of the treaty gave offence to other countries also. War was openly talked of in Paris, and in 1796 France declared the treaty of 1778 with the United States to be void. She claimed that in the Jay treaty we had abandoned the principle that "free ships make free goods," and that this abandonment was an injury to France. Spain and Holland for a time threatened to make common cause with France. They wished to compel us to protect their goods while in our bottoms. The opposition of Spain was especially embarrassing, as we had recently concluded a very favorable treaty with that country, which she now refused to live up to. The people of the West, particularly those of Kentucky, had long been desirous of obtaining free navigation of the Mississippi, Washington clearly saw the importance of this privilege, and in 1791 he opened negotiations with Spain in regard to this matter, and also in regard to the escape of slaves to Florida, then in the possession of Spain. No immediate results came from this effort, but in 1794 he made another attempt to adjust matters by sending Thomas Pinckney to Madrid. Spain entered upon a Fabian policy, and Pinckney, for a time, accomplished nothing. The case looked unpromising. The conduct of Spain, in the mind of Washington, was "insulting as it relates to us." Pinckney, however, was bold and persistent, and finally succeeded in getting a very good treaty. It conceded practically all that we asked for. It settled the boundary of Florida, gave free navigation of Mississippi River, conceded a place of deposit at New Orleans, granted a pledge of non-interference with the Indians, constituted a board of arbitration, and made a commercial agreement. In fact, Pinckney scored a distinct diplomatic triumph—greater by far than he has ever been given

credit for. The treaty was signed on October 27, 1795; and it was this treaty that Spain now refused to abide by. Relations with both France and Spain were becoming somewhat critical. Gouverneur Morris was our representative at Paris at the time of the Genet episode. His recall was asked for, and James Monroe was appointed to the post. He was instructed to allay the fears of the French in regard to the Jay embassy, to seek to remove the embargo on American vessels at Bordeaux, to obtain compensation for the capture of American ships, to prevent further violation of treaty obligations, and to get assistance for the opening of Mississippi River. He accomplished practically nothing, aside from making himself and the United States ridiculous in the eyes of Europe. After two years, Washington recalled him and appointed C. C. Pinckney in his stead. France refused to receive Pinckney, and the situation looked ominous.

Even when the treaty was ratified in June, 1795, the agitation was not at an end. There was no disposition on the part of the House to accept the ratification of the Senate as final. It was necessary that certain appropriations be made by Congress before the treaty could become operative. These the House was very slow to make, and asked Washington for the papers in the case. Washington, after careful consideration, declined to submit the treaty papers, on the ground that the House was no part of the treaty-making power. The contest was bitter, and at one stage even dramatic. It seemed for a time that the treaty would fail because of a lack of appropriations. The eloquent and pathetic speech of Fisher Ames probably saved the day. On the 28th of April, 1796, he came into the House, suffering from what he thought was a fatal illness, and made a pathetic appeal to his fellow members to keep the faith pledged in the treaty by making the necessary appropriations. He began by saying that his failing strength could sustain him only a few moments, but his intellect took fire, his bodily ills were forgotten for the

instant, and he made a speech of considerable length and great effectiveness. He showed that the feeling against the treaty was largely the result of prejudice against Great Britain. "If all was granted," he said, "would not a treaty of amity with Great Britain still be obnoxious? . . . If a treaty left King George his island, it would not answer; not if he stipulated to pay rent for it." He contended that the treaty had already been ratified by the proper constitutional authority, and that it was then binding, and should be carried out in good faith. In conclusion he said: "Yet I have perhaps as little personal interest in the event as anyone here. There is, I believe, no member who will not think his chance to be a witness of the consequences greater than mine. If, however, the vote should pass to reject, and a spirit should rise, as it will, with the public disorders, to make 'confusion worse confounded,' even I, slender and almost broken as my hold upon life is, may outlive the government and constitution of my country." This remarkable speech and the essays of Hamilton were the most effective arguments in favor of the treaty. On the 30th of April, two days after Ames's speech, the House voted by a majority of fifty-one to forty-eight that it was expedient to carry the treaty into effect; and on the 6th of May following, the necessary appropriations were made by Congress. Parliament took the same steps on July 4, 1797.

During the entire controversy, Jay maintained the even tenor of his way. He did not expect popularity, and hence was not disappointed. "I left this country well convinced," he said, "that it [the treaty] would not receive anti-Federal approbation; besides, I had read the history of Greece, and was apprised of the politics and proceedings of more recent date." He was by no means satisfied with the treaty, but he insisted that there was "no reason to believe or conjecture that one more favorable to us was attainable." This is really the only valid ground upon which the defence of the treaty of 1794 can be put. It was not a favorable or even a just treaty, but it was the best attainable under the

circumstances. It was the half-loaf—the “entering wedge,” as Jay once put it.

In a letter to Randolph, written on the same day that the treaty was signed, Jay made a few “cursory observations” which are interesting. He said that it was impossible to obtain the evacuation of the posts at an earlier date, and that the article regarding the payment of the British debts was a *sine qua non*. He evidently approved also of the justice contained in the clause. “Let us be just and friendly,” he said, “to all nations.” He spoke also of the “delicacy, friendliness, and propriety” of Great Britain, and said that “not an expectation, or even a wish, has been expressed that our conduct towards France should be otherwise than fair and friendly.” Washington and Hamilton looked upon the treaty in much the same way as Jay did.

Strict justice was not done to the United States by the treaty, but it averted war for the present and gave the young republic time in which to gather strength; and under it American merchants obtained \$10,345,000 for “irregular or illegal captures.” Under it, also, commerce increased and captures decreased. It is interesting to note, too, that some men in England thought Jay got the better of the bargain. About 1812, Lord Sheffield remarked: “We have now a complete opportunity of getting rid of that most impolitic treaty of 1794, when Lord Grenville was so perfectly duped by Jay.”

In bringing this chapter to a close, it might be well to say a word in regard to the fundamental principle of Washington’s foreign policy. The keynote of that policy was independence and neutrality. Yet with all his exclusiveness, his policy did not tend toward provincialism or colonialism, but strongly toward nationalism. He was for peace also, but peace with honor. His methods were quiet but effective. He planned highways and canals for the westward expansion, secured from Spain the free navigation of the Mississippi, and obtained the western posts from Great Britain. The foundations of our foreign policy were well laid.

## CHAPTER XIII

### *DOMESTIC AFFAIRS OF WASHINGTON'S ADMINISTRATIONS*

THERE are some important internal affairs, more or less detached, which should receive attention at this point.

The first United States census was taken, in accordance with the Constitution, in 1790. It showed an aggregate population of three million nine hundred and twenty-four thousand two hundred and fourteen, including the slaves, who constituted about fifteen or twenty per cent of the number. Virginia, Massachusetts, Pennsylvania, and New York were the largest States in point of population. After the enumeration of the people, it was necessary to reapportion the representatives among the various States. This proved to be no easy matter. The first bill introduced provided for one hundred and thirteen members as against sixty-five since 1789. The bill was defeated; and another, drafted on very peculiar lines and providing for one hundred and twenty members, was introduced, and passed by the two houses. It was vetoed by the President on the ground of unconstitutionality. This veto is interesting as the first under the present Constitution. A third bill, providing for one hundred and five members, was immediately introduced and became a law.

The new census inspired the outlying territories in several localities with an ambition to become States. Three entered the Union during Washington's administrations. Vermont, with a population of eighty-five thousand four



hundred and twenty-five was admitted in March, 1791; Kentucky, with seventy-three thousand six hundred and seventy-seven inhabitants, of whom eleven thousand four hundred and twenty were slaves, was admitted in June, 1792; and Tennessee, with a population of thirty-five thousand six hundred and ninety-one in 1790, was admitted in 1796. The admission of Vermont introduced no new element into the Union. The character of that State did not differ materially from that of the original thirteen. Kentucky and Tennessee, however, brought in an element that was decidedly new and strange. It is true, of course, that these two States were settled largely by people from the Atlantic seaboard, but a remarkable transformation had taken place in them in their new environment. Their interests differed somewhat from those of the men of the East, and their eyes were upon Mississippi River rather than upon the Atlantic Ocean. They represented the beginning of the great westward movement—the van of western expansion. It was their descendants who took possession of the city of Washington at the time of Andrew Jackson's inauguration in 1829. They represented the great West which was so soon to dominate American politics. From the standpoint of culture and political wisdom, they were decidedly below the eastern average, but in another respect they were a source of strength to the Union. The West entered the Union without a feeling of jealousy or rivalry. It had no traditions of a previous sovereignty. The Atlantic States had individualities of their own before the Constitution was drafted, and many of them felt that they were making a very great sacrifice in accepting it. The new States of the West were fettered by no such traditions. State sovereignty and State Rights gave them comparatively little concern. Hence, their admission as States tended to strengthen the Union idea and to foster the national spirit.

Early in Washington's administrations it was necessary for him to turn his attention to the permanent seat of the government. The government, inaugurated in New York,

was then established at Philadelphia for ten years, with the provision that it was to be located permanently on the Potomac after that time. In 1791 Washington had the new site definitely fixed. It was surveyed by Andrew Ellicott. The engineer, Major L'Enfant, had practically a free hand in preparing the topographical plan. He had no old landmarks for his embarrassment, and he laid out the new city in the form which it still retains. The streets, avenues, and squares were liberal and spacious. It has been estimated that fifty-four per cent of the area of the city is now devoted to such public uses, as against twenty-five per cent in Paris. The future capital was not yet named, and Washington was inclined to style it "The Federal City," but the commissioners very appropriately insisted that it be called "Washington."

The second presidential election, held in the fall of 1792, was not an animated contest. Party lines were being formed with some rapidity, but when Washington's consent to serve another term was obtained a vigorous contest was precluded. Washington's inclinations were for retirement, but he was persuaded that it was his patriotic duty to remain in office for another term. The people really demanded that he should do so, and when his consent was obtained even the Republican leaders thought of no one else. There was something of a contest for the vice-presidency. There was no caucus, or convention, or meeting of any kind to nominate candidates, but the people, by a sort of common consent, fixed upon John Adams and Governor George Clinton as the opposing candidates. When the votes were counted it was found that Washington had received one hundred and thirty-two, the entire number; Adams, seventy-seven; Clinton, fifty; Jefferson, four; and Aaron Burr, one, from South Carolina. Fifteen States participated in the election. The Republicans obtained a majority in the House, while the Senate remained Federalist. Then occurred the first great opportunity for a deadlock in our system of government.

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In the summer of 1793, yellow fever of a malignant type broke out on the coast and spread from Charleston to Boston. Philadelphia, however, was most afflicted. Over four thousand deaths occurred in that city, and it is estimated that seventeen thousand people fled from the city for safety. Effective sanitary regulations were not enforced, and the physicians of the time knew little of the disease or its remedies. The most ridiculous preventives were resorted to by the people in their despair. Bonfires were lighted to purify the air, and the firing of guns was resorted to for the same purpose. The smell of powder was deemed sanitary. Purges, laudanum, and herbs, calomel and jalap, vinegar, camphor, and tarred rope were used either as remedies or preventives. Business was utterly demoralized, and it must be said in favor of the epidemic that it helped to rid the country of Freneau's *Gazette*. The fever appeared again in Philadelphia a few years later, but in a milder form, and was more easily and successfully combated.

Indian affairs were matters of no small moment at the beginning of the national period. The status of the Indian in the United States was peculiar. He was in one sense a native, in another a foreigner. Legally, he was a foreigner until 1871. The Indians were, in the language of John Marshall, "domestic dependent nations." They were not citizens of the United States, and their right to their land was recognized, and their cession of it to the United States was, in theory at least, voluntary. They had not the right, however, to cede it to any foreign country. They managed their own internal affairs, but in external matters the government of the United States exercised a protectorate. The representative of the government was the "Indian Agent." He was also the dispenser or distributor of the money and supplies voted by Congress, either in compliance with a treaty or from philanthropic motives. The Indian was thus the ward of the nation, although treaties were made with him as with a nation of Europe. According to the count of General Francis A. Walker, the United States made three

hundred and eighty-two treaties with the Indian tribes prior to 1871. At that time a new policy was entered upon. It was then declared by Congress that "Hereafter no Indian nation or tribe within the territory of the United States, shall be acknowledged or recognized as an independent nation, tribe or power with whom the United States may contract by treaty." This was really the only logical position to take. Treating with an Indian tribe as with a foreign nation had become a mere farce. However, it would not have been possible for the government to have assumed this position at a much earlier time. The Indian, even at the beginning of the national period, was a formidable foe, as Harmer, St. Clair, and others found to their sorrow.

It was necessary for the government to take some steps for the chastisement and pacification of the Indians in the territory northwest of Ohio River, in 1790. The depredations of these tribes upon the western pioneer settlements were intolerable, and General Harmer was sent against them. He clashed with the Miamis, and was defeated. So were his successors in command, until General Anthony Wayne was sent on the mission. With his characteristic energy he was successful in pacifying the savages, and in 1795 they made a treaty with the United States in which they ceded a large amount of land in the northwest territory.

Indian affairs were important from the political as well as from the economic standpoint. These affairs constituted an issue in national politics. Both the Federalists and the Republicans agreed that the Indian should be reduced to subjection, but disagreed as to the proper methods. The Federalists, or Nationalists, as they might better have been called, would enlarge the regular army and employ that agency for the reduction of the Indians; while the Republicans, looking upon a standing army as an instrument of tyranny, would employ the militia only.

In another quarter also, serious Indian troubles were threatened. The inhabitants of Georgia and the Creeks became involved in a contest which assumed a serious aspect

at this period, but Washington averted hostilities for the time being. The Indian question has always been dealt with in this country in a temporizing manner, until the Indian himself has practically solved the problem by his disappearance. He has always found Anglo-Saxon civilization less congenial than the Latin.

There was a second so-called "inferior race" with which the government had to deal. Negro slavery had existed in America since 1619, and its presence became constantly more and more alarming. Legislation for the regulation of the institution now became necessary, and Congress passed the first Fugitive Slave Law on the 5th of February, 1793. It was based upon that clause of the Constitution which declares that "No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due." The practices adopted in the execution of this law were brutal and inhuman in the extreme. Slave hunters resorted to methods that would not have been tolerated at a later time. Even freedmen were seized and again pressed into service as slaves. The enactment of the law, however, passed almost unnoticed. The commotion caused by the passage of the Act of 1850 is in striking contrast. The conscience of the nation had been aroused in the meantime.

It has been noticed in a previous chapter that the tax levied upon distilled spirits was obnoxious to the people of the West—much more so than a similar tax at the present time, under changed industrial conditions. The four western counties of Pennsylvania were especially emphatic in their protests. They claimed that the transportation charges on their grain to the Atlantic seaboard were prohibitive, while they could easily pay the rate on the spirits distilled from the grain, in case no excise duty were levied. Whiskey was also in this locality the regular medium of exchange.

The collection of the tax was resisted from the first. Protests and remonstrances came from the localities most affected, and force was resorted to in many instances. The old spirit of lawlessness—the spirit of Daniel Shays—which had been too prevalent in the period of the Confederation was alive again. The participation, too, of the so-called “best citizens” gave it an endorsement which was exceedingly dangerous. The mobs which opposed the collection of the whiskey tax were lawbreakers, pure and simple, notwithstanding the fact that they were encouraged in their lawlessness by some prominent Republican leaders. In 1792 Washington issued a proclamation calling upon the citizens to uphold the law; yet two years later revenue collectors were assaulted, mails were seized, and the United States marshal was fired upon. On July 17, 1794, a mob made an attack upon the house of Inspector-general Neville, at Pittsburg. One man was killed in the melee, and the house was burned. The storm centre of the opposition was in western Pennsylvania. In the summer of 1794 a mass meeting was held on Braddock's Field to devise ways and means to oppose the tax. The gathering was a dangerous one. The secretary of the meeting was Albert Gallatin, later a distinguished secretary of the treasury. Such open defiance of the law could no longer be tolerated; and as the offences were against the revenue laws, Hamilton resorted to rigorous measures. In September, 1794, fifteen thousand troops from Pennsylvania, New Jersey, Maryland, and Virginia were called out for service. Their presence in Pennsylvania solved the difficulty. The insurgents did not show fight. They recognized the logic of the situation, and realized, no doubt, that the days of the impotent Confederation were over. A few arrests were made, and two of the participants were convicted of treason. They were ignorant men, who did not fully realize the seriousness of their acts, and were pardoned by Washington. In July of 1795, the President issued a proclamation of general amnesty, and the incident was closed. It is

sometimes said that the levying of the whiskey tax was a political blunder, and such it probably was; but it is entitled to some credit for furnishing an early occasion to the general government to assert itself. The object lesson was a very salutary one for the turbulent West.

In his message to Congress of November 19, 1794, Washington recited all the facts in the case, and condemned the activities of "certain self-created societies." His reference was to the Democratic clubs, whose pernicious activities had been embarrassing to the administration. It is probable that, in this respect at least, Washington overestimated the influence of these societies. They sympathized with the opposition to the whiskey tax, and were opposed to the calling out of the troops, but they were not the originators of the insurrection or even the leaders of it.

The famous case of *Chisholm versus Georgia*, which led to the adoption of the eleventh amendment to the Constitution, was tried during this period. Chisholm brought suit in the Supreme Court, under the Constitution, against the State of Georgia, and Georgia promptly denied the jurisdiction of the court. The court maintained its jurisdiction, and this ruling led to the adoption of the amendment. It was held to be incompatible with the dignity of a State for a private individual to compel it to appear in court; hence, on March 5, 1794, Congress proposed an amendment to the effect that "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State." This amendment was ratified in due form and declared in force, January 8, 1798. The results of this amendment have not been so unfavorable as was feared by some in 1794. It did not seriously weaken the power of the Supreme Court, yet it did enable some of the States to repudiate their debts and violate other obligations.

The ranks of Washington's early appointees remained for the most part intact during his first administration; but

numerous changes were made in the second. The faithful John Jay resigned the chief justiceship of the Supreme Court to become Governor of New York in 1795. Judge Cushing, of Massachusetts, was appointed to the position, but declined; John Rutledge, of South Carolina, was next appointed, but the Senate refused to ratify the appointment; Oliver Ellsworth, of Connecticut, was then chosen, his nomination was duly confirmed, and he assumed his duties.

Important changes were also made in the Cabinet; in fact, that body was completely reorganized. It was seen even in the first administration that the Cabinet could not long hold together. The drawing of party lines and the strained relations between Hamilton and Jefferson made unity in the Cabinet impossible. Hamilton's policies were being adopted, and Jefferson, finding himself out of sympathy with the administration, resigned in December of 1793. Randolph was then transferred to the state department. He was not a brilliant success at his new post. He hesitated and was lost. He tried to please both parties, and, as is usual in such cases, pleased neither. He was an able man in some respects, but lacked decision of character. Having lost the confidence of Washington, he retired from the Cabinet in 1795, and was succeeded by Timothy Pickering, of Pennsylvania.

Hamilton also retired from the Cabinet, in June, 1795. His retirement was a serious blow to the government, as Washington fully realized. Hamilton had certainly done a great work. He was the greatest positive and constructive force in the new government. Much of his work was of a fundamental character and continues to this day. He was succeeded by Oliver Wolcott, Jr., of Connecticut, a man in full sympathy with Hamilton's policies, but of much less ability.

Late in 1794, General Knox retired and was succeeded by Timothy Pickering, who was later made secretary of state. James McHenry, of Maryland, succeeded Pickering in the war department.



When Randolph retired from the office of attorney-general to become secretary of state, he was succeeded by William Bradford, of Pennsylvania, who died in 1795. Charles Lee, of Virginia, then succeeded to the office.

The Cabinet was now entirely remodelled. The four great men whom Washington had called to his assistance in 1789 had retired and others had taken their places. The new Cabinet was not to be compared with the old. The new men were men of second-rate ability, who had rendered acceptable service in subordinate positions. Pickering was the ablest of the four, and a man of strong personality. He was a lawyer, and a graduate of Harvard, and had been prominent in the affairs of the Revolution. After the Revolution, he took up his residence in Philadelphia. He had been postmaster-general before entering the Cabinet. In public and private life he was scrupulously honest and conscientious. He retired from office a poor man, and took up his abode in a log cabin on some new land in Pennsylvania. He later left this pioneer life, however, and returned to Massachusetts, his native State, and reëntered the public service.

Oliver Wolcott, Jr., was a Yale man, who had seen service in the Revolution. He had been comptroller in the treasury department under Hamilton. After retiring from the Cabinet, he became Governor of Connecticut.

James McHenry, the new secretary of war, was a citizen of Maryland, and had served as a surgeon in the Revolutionary War. He was also at one time Washington's private secretary, and had served in the Maryland Senate and in Congress before entering the Cabinet.

Charles Lee, of Virginia, the attorney-general, had previously served in the Continental Congress. He should not be confused with the notorious Charles Lee, the soldier of fortune of the Revolution.

This Cabinet impresses one as being composed of commonplace men, but it should be borne in mind that it was exceedingly difficult to get good men to accept the offices and impossible to induce the best men to do so. There

were reasons for this. Expenses were high in Philadelphia and salaries were low; the proper respect was not accorded to a Cabinet position at that time; and the political and personal antagonisms of the day had made the positions less attractive. John Adams stated that Washington offered the state portfolio—the most attractive in the Cabinet—to no less than seven men in 1795 and 1796. He continues: "He has not been able to find anyone to accept the War Office." Yet the Cabinet got along fairly well. The burden of the world's work is carried by the ordinary rather than by the brilliant man.

During the summer of 1796, there was considerable speculation in regard to the third presidential election, which was to be held in the coming fall. Washington's attitude toward the office was a matter of interest, and when he declared in September that he would not consider a third term there was much activity among the friends of rival candidates. Washington defined his position in regard to the presidency in his famous "Farewell Address" to the American people, which was published in Claypoole's *American Daily Advertiser* for September 19, 1796. The address was American and national throughout. He emphasized the idea of "one nation" and proclaimed his dislike for "geographical discriminations—*Northern* and *Southern*—*Atlantic* and *Western*; whence designing men may endeavor to excite a belief that there is a real difference of local interests and views." Thinking possibly of the recent outbreaks during the whiskey insurrection, he advocated respect for authority and obedience to law, and deplored "all obstructions to the execution of the laws." Having in mind, no doubt, the extremes to which the partisans of France and England had gone in their enmity, he deplored "the baneful effects of the Spirit of Party." He advocated religion and morality. "Can it be," he asks, "that Providence has not connected the permanent felicity of a Nation with its virtue?" He believed that righteousness exalteth a nation, and urged his people to "observe good

faith and justice towards all Nations." Writing in the spirit of his Proclamation of Neutrality, he advised against "broils and wars" with other countries, and discountenanced "overgrown military establishments." "The Nation which indulges towards another," he said, "an habitual hatred or an habitual fondness, is in some degree a slave. It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest . . . 'Tis our true policy to steer clear of permanent alliances, with any portion of the foreign world." In conclusion, in speaking of the errors of his administration, he said: "Whatever they may be, I fervently beseech the Almighty to avert or mitigate the evils to which they may tend. I shall also carry with me the hope that my country will never cease to view them with indulgence; and that after forty-five years of my life dedicated to its service, with an upright zeal, the faults of incompetent abilities will be consigned to oblivion, as myself must soon be to the mansions of rest.

"Relying on its kindness in this as in other things, and actuated by that fervent love towards it which is so natural to a man who views in it the native soil of himself and his progenitors for several generations;—I anticipate with pleasing expectation that retreat, in which I promise myself to realize, without alloy, the sweet enjoyment of partaking, in the midst of my fellow-citizens, the benign influence of good laws under a free government,—the ever favorite object of my heart, and the happy reward, as I trust, of our mutual cares, labours, and dangers."

This is one of the most sublime documents in American history. No other man in all our history could, with propriety, attempt a similar address. When Andrew Jackson, at the close of his second term, attempted to bequeath a similar legacy to the American people, the result was little less than ludicrous.

The declaration of Washington was the signal to clear the decks for action. The friends of rival candidates now became active. It is probable that the Republicans would

have attempted to defeat Washington had he been a candidate for a third term, as he had endorsed Hamilton's policies and was essentially a Federalist, though not, of course, an intense partisan. They probably breathed easier, however, at the withdrawal of the most formidable man whom the Federalists could put forward. There was no nominating convention, and no "platform" in the present sense of that term. Congressional caucuses were held, and the two parties instinctively turned toward John Adams and Thomas Jefferson as their respective leaders. Jefferson had no rival whatever for Republican leadership. He was supreme in his party, while Adams, Hamilton, and Jay were the most conspicuous men in the Federalist party. Of these Adams was the only available candidate, as Hamilton had made too many enemies and the treaty with Great Britain had made Jay unpopular. There were positive reasons, too, why Adams should be preferred, as will appear later. The rival candidates had long been prominent in American history. Both had been conspicuous when independence was declared—Jefferson as the author of the famous Declaration of Independence, and Adams as "the Colossus of the debate" when the Declaration was adopted. They were quite opposite in their ways of thinking. Adams was an aristocrat, and Jefferson a democrat. They were on good terms for a time, but became alienated from each other in the heyday of their careers. During the Adams administration they were bitter enemies, but it is pleasing to note that in the evening of their lives the two great men became reconciled and lived upon intimate and confidential terms.

In the campaign, Jefferson had the advantages of a united party and of a growing democratic spirit among the people. There was a good deal of feeling in the campaign, and no little misrepresentation. Some tried to make it appear that Adams was disloyal to the Federalist party, and would not continue the policy of Washington. "A Federalist" declared in a New York newspaper that Adams was never on intimate terms with Washington, and had even opposed

many of the measures of the President. The French Minister, M. Adet, also attempted to turn popular opinion against Adams. He wrote a letter to the secretary of state, accusing the United States of violating treaty obligations with France. He caused the letter—or rather series of letters—to be published in the newspapers, and sought in this dramatic and rather unethical way to aid the candidacy of Jefferson. He was disappointed, as his letters had no appreciable effect. The ruse was too transparent. The shades of the Boston Massacre also arose to rebuke Adams. It was said that there were only two lawyers in Massachusetts at the time mean enough and mercenary enough to defend Captain Preston and his British associates, and that John Adams, of Braintree, was one of these. He did it for British gold, and straightway became a violent patriot to atone for his awful act. Jefferson also was held up to ridicule. It was admitted that he was a philosopher who had gotten the better of Moses, had shown that the Deluge never took place, and had commented learnedly and discriminately upon the differences between the white and the black races—all this was admitted, but what practical qualifications did he possess for the presidency?

Adams was elected by a narrow majority. He afterward referred to himself as “a President of three votes,” and it is not too much to say that the memories of his telling strokes in Revolutionary days saved him from defeat. Adams obtained seventy-one votes; Jefferson, sixty-eight; Thomas Pinckney, the second Federalist candidate, fifty-nine; Aaron Burr, the Republican candidate with Jefferson, thirty; Samuel Adams, fifteen; Oliver Ellsworth, eleven; George Clinton, seven; John Jay, five; James Iredell, three; Washington, two; John Henry, two; and Charles C. Pinckney, one.

The Senate remained Federalist, while the House was Republican. A few moderate Republicans held the balance of power.

Washington now began to make active preparations for the retirement which he had so long coveted. On the



Pierre Adet, Minister from France.

*From the crayon drawings by James Sharpless.*



Chevalier d'Yrujo, Minister from Spain.

*From the crayon drawings by James Sharpless, in Independence Hall, Philadelphia.*



3d of March, 1797, he gave a dinner to some personal and official friends and said: "Ladies and gentlemen, this is the last time that I shall drink your health as a public man. I do it with sincerity, wishing you all possible happiness." At the inauguration on the following day, he was the most conspicuous figure. At a banquet tendered to him by the merchants of Philadelphia on the evening of inauguration day, the band played *Washington's March*, and emblematic pictures were exposed. His journey from Philadelphia to Mount Vernon was like a triumphal march. A Baltimore paper of the 13th of March said: "Last evening arrived in this city, on his way to Mount Vernon, the illustrious object of veneration and gratitude, *George Washington*. . . . At a distance from the city, he was met by a crowd of citizens, on horse and foot, who thronged the road to greet him, and by a detachment from Captain Hollingsworth's troop, who escorted him in through as great a concourse of people as Baltimore ever witnessed. On alighting at the Fountain Inn, the general was saluted with reiterated and thundering huzzas from the spectators."

There was, however, an occasional discord in these pæans of praise. The Republican press took the occasion to make a vindictive parting shot at the most powerful opponent of its principles. The *Aurora*, published by Benjamin Franklin Bache, printed the following valedictory on the 6th of March, 1797: "'Lord, now lettest Thou Thy servant depart in peace,' was the pious ejaculation of a pious man who beheld a flood of happiness rushing in upon mankind. If ever there was a time that would license the reiteration of the ejaculation, that time had now arrived, for the man who is the source of all the misfortunes of our country is this day reduced to a level with his fellow-citizens, and is no longer possessed of power to multiply evils upon the United States. If ever there was a period for rejoicing, this is the moment. Every heart in unison with the freedom and happiness of the people, ought to beat high with exultation that the name of Washington ceases from this day



to give currency to political insults, and to legalize corruption. A new era is now opening upon us, an era which promises much to the people, for public measures must now stand upon their merits, and nefarious projects can no longer be supported by a name. When a retrospect has been taken of the Washingtonian administration for eight years, it is a subject of the greatest astonishment that a single individual should have cankered the principles of republicanism in an enlightened people just emerged from the gulf of despotism, and should have carried his designs against the public liberty so far as to have put in jeopardy its very existence. Such, however, are the facts, and with these staring us in the face, the day ought to be a JUBILEE in the United States." Sentiments similar to the above were echoed by the Republican papers in the large cities, but probably did little to disturb the serenity of the great man at Mount Vernon. Bache was woefully in error if he thought that the name of Washington was to have no further influence in the councils of the nation. He was still the strong staff upon which the nation leaned and whose support it sought in impending danger. When the X, Y, Z correspondence was published and aroused the nation into a frenzy against France, the government and the people instinctively turned to Washington as the strong deliverer. For a time war seemed inevitable and Congress began active preparations. In this crisis John Adams wrote to Washington, urging him to take command of the army. The fires of patriotism still burned brightly in the breast of the old chief, and he signified his willingness to buckle on his armor again. On July 4, 1798, he wrote to Adams: "In case of actual invasion by a formidable force, I certainly should not in-trench myself under the cover of age or retirement, if my services should be required by my country to assist in repelling it." Fortunately, he was not called upon to lead the army, but continued in retirement at Mount Vernon, supervising his agricultural interests, until death closed his useful life.

## CHAPTER XIV

### *RELATIONS WITH FRANCE DURING THE ADMINISTRATION OF JOHN ADAMS*

THE "blunt and irascible old John Adams" became President of the United States on the 4th of March, 1797. He was much more, however, than merely blunt and irascible. He was a man of force and ability, of high ideals and incorruptible integrity. There were occasions when he gave unseemly exhibitions of irritation, and even of anger. His temper was at times uncontrollable. He was sometimes petulant and even petty. His vanity was inordinate and his sensitiveness excessive. Yet these were not the predominant traits of his character. Notwithstanding these objectionable personal qualities, John Adams was a pure, high-minded, and patriotic man. He had the courage of his convictions, was honest in word and deed, and was generally correct in his opinions on governmental policy. His effectiveness in public life was lessened somewhat by his egotism and jealousy, yet he must be ranked among the strongest of our administrators.

In addition to his forceful personal qualities, he had had a long experience in public affairs. He was well and favorably known both in Europe and America long before he became president. He was born in Braintree, Massachusetts, in 1735, and was graduated from Harvard College at the age of twenty. He studied law, and took up the practice of his profession in his native town. He soon removed

to Boston, which was only a short distance away and presented many attractions for able and ambitious young men. He early became a leader in the distinguished band of Massachusetts patriots in which his cousin, Samuel Adams, and John Hancock were conspicuous. In 1774 he was a delegate to the first Continental Congress and quickly made an excellent record in that body. He was the kind of man demanded by the times. He was rugged in his honesty; bold, outspoken, and effective in speech. His diplomatic experience, too, was exceptional. He had represented his country in Great Britain, France, and Holland with credit, and with as much success as he could well hope for. He had aided in the organization of the government under the new Constitution, and had served for four years in the vice-presidency, which office he termed a "respectable situation."

John Adams was, then, well equipped for the work which he was about to undertake. In fact, he was the best available man in the United States at the time. Washington had positively declined a third term, and Hamilton and Jefferson, though abler men, were not so safe as Adams. Jay was pure, spotless in integrity, and of great ability, but not so determined and aggressive as Adams. The hard-fisted tactics of the latter were necessary if the battles of the times were to be won. Then again, Hamilton and Jay were partial to Great Britain, and Jefferson to France. Adams was comparatively impartial. He had no love for either country. He was opposed to France by race, instincts, and traditions, and had been alienated from Great Britain in the Revolution and during his subsequent residence in that country. He spoke his true sentiments when in an audience with King George III. he remarked: "I must avow to your majesty that I have no attachment but to my own country." He was the best man in the United States to carry out the policy of neutrality which was then so essential to our national well-being. Jefferson, though at times his bitter enemy, appreciated this independence of spirit. "I do not

believe," he said, "Mr. Adams wishes war with France, nor do I believe he will truckle to England as servilely as has been done." The Adams administration was not a brilliant success in some respects, but the fault did not all lie with the President.

Violent party contentions and bitter personal rivalries and jealousies characterize the administration of John Adams. Affairs were in a state of constant turmoil from the day Washington retired to Mount Vernon until Adams discourteously slipped out of the capital city without giving his successor the customary greeting. The troubles of the President began on the day of his inauguration. Washington was, greatly to the vexation of Adams, the centre of attraction on this occasion. He was about to retire from public life after having devoted forty-five years to the loyal service of his country. The case was an exceptional one. The people followed Washington in tears as he departed, while Adams was, as he sadly remarked, the "unloved one." The vain and sensitive nature of the President was sorely grieved, and he began his administration in a greatly perturbed spirit.

His inaugural address was dignified, but not striking. It contained many generalities and conventionalities and a few platitudes, but no definite statement of public policy. In fact, the difficulty with France, which was destined to absorb almost the entire time and attention of the Adams administration, had not yet assumed a serious aspect. There was no great subject before the people upon which a definite and official utterance might be expected. The views of Adams were well known, and a continuation of Washington's policy was confidently expected. Under these circumstances, Adams contented himself with declaring his allegiance to the Constitution and his faith in the prosperity of republican institutions. The forms and ceremonies of monarchy had no attractions for him. "Can anything essential," he asked, "anything more than mere ornament or decoration, be added to this by robes or diamonds?"

At the opening of the administration the personal relations existing between Adams and his chief opponents in the Republican party were decidedly cordial. The President was very bitter toward Hamilton and his friends, but an effort was made by Jefferson and others to win his favor. The Republicans represented to him that he had been very shabbily treated. They bore reports of all sorts of Federalist treachery to his willing ears, and Jefferson addressed a letter to him—which, by the way, was never delivered—congratulating him that he had not been “cheated out of his succession by a trick worthy the subtlety of his arch-friend of New York.” To Madison, Jefferson wrote: “If Mr. Adams could be induced to administer the government on its true principles, quitting his bias for an English constitution, it would be worthy of consideration whether it would not be for the public good to come to a good understanding with him as to his future elections.” Jefferson was personally very courteous and cordial toward Adams. He called on the President promptly when the latter came to Washington and he spoke of him in very complimentary terms when he took the chair in the Senate. Mrs. Adams added her voice to the chorus of conciliation, and it really seemed that all the elements of a love feast were at hand. John Adams, however, was the last man in the world to yield to such blandishments. Jefferson, the most astute political manager of his time, should have known this. Adams was very willing to be placated on purely personal matters, but he would not consent to waive fundamental political principles. He was a Federalist by training, instinct, and traditions, and could not be reconciled to the tenets of the opposing party. The Republicans soon discovered this, apparently, and their ardor abated. Then bitter animosity sprang up between the administration and the opposition.

The difficulty with France, which was the all-absorbing topic of the Adams administration, in so far as foreign affairs were concerned, was a legacy from the previous administration. When Jefferson came home from France to take a

seat in the Cabinet, Washington appointed Gouverneur Morris minister to Paris in his stead. The contrast between the two men in their attitude toward France was very marked. Jefferson was infatuated with the French ideas of liberty, fraternity, and equality, while Morris looked upon the whole revolutionary movement as a wild delirium. When Genet was recalled Morris became *persona non grata*, and his recall was asked for and promptly granted. His successor at the French post was James Monroe, a future president of the United States. The appointment, made on May 28, 1794, was an unfortunate one, and the mission, a miserable and humiliating failure, ended in his being recalled by Washington. Monroe was a member of the United States Senate at the time, an ardent Republican, with no sort of sympathy for the existing administration. He arrived in Paris on the 2d of August, 1794, and immediately began to embarrass his government by indulging in foolish and extravagant exhibitions of love for the revolutionary party in France. His reception by the Convention was theatrical. It included the address of the President and the customary *accolade*, or fraternal embrace. The address was of the gushing kind. In conclusion the President remarked to Monroe: "You see here the effusion of soul that accompanies this simple and touching ceremony. I am impatient to give you the fraternal embrace, which I am ordered to give in the name of the French people. Come and receive it in the name of the American people, and let this spectacle complete the annihilation of an impious coalition of tyrants." Monroe caught the infection of the moment, and his reply was in bad taste. The result was a well-deserved censure from Edmund Randolph. The secretary of state objected to the "extreme glow" of some parts of the address and informed Monroe that his duty was "to cultivate the French Republic with zeal, but without any unnecessary *éclat*." Monroe then proceeded to ignore both the letter and the spirit of his instructions. He was intensely Republican at this time, but not broadly American.

He was loyal to his party, but not to the president who appointed him.

M. Thiers, the French historian, represents Monroe as arguing against a French-American war on the ground that such a contest would compel the United States to make an alliance with Great Britain. "By patiently enduring, on the contrary," he continues, "the wrongs of the present President, you will leave him without excuse, you will enlighten the Americans and decide a contrary choice at the next election. All the wrongs of which France may have to complain will then be repaired." Under the circumstances, there was nothing for Washington to do but to recall him, which he did on the 22d of August, 1796; and at a later time he passed some very severe strictures upon his conduct. "The truth is," said Washington, "Mr. Monroe was cajoled, flattered, and made to believe strange things. In return he did, or was disposed to do, whatever was pleasant to that nation—reluctantly urging the rights of his own." The whole affair was unfortunate in the extreme. Monroe, angry because of his recall, demanded the reasons for the action. Not being given a satisfactory reply, he proceeded to prepare and to publish a book of more than four hundred pages for his vindication. His resentment even led him to transgress the bounds of official propriety by publishing confidential correspondence.

In the course of the book he made a bitter attack upon Washington and his administration. An elaborate memorandum was found among the papers of Washington at Mount Vernon, containing comments upon the "View" of Monroe, and in a letter to John Nicholas, Washington spoke of the impropriety "of exposing to public view his private instructions and correspondence with his own government."

Washington cannot be entirely acquitted. The appointment was an error of judgment on his part. It is now seen that unity and effectiveness in administration cannot be secured by enlisting the services even of the most

eminent of the opposing party. There was good reason to believe that Monroe could not fairly represent the administration at that time. Writing some years later he said: "I was at this time a member of the Senate of the United States, for the State of Virginia, which station I had held for several years before. It had been, too, my fortune to differ from the administration upon many of our most important public measures. It is not necessary to specify here the several instances in which this variance in political sentiment took place between the administration and myself. I think proper, however, to notice two examples. . . . The first took place when Mr. Morris was nominated Minister Plenipotentiary to the French Republic; which nomination I opposed, because I was persuaded, from Mr. Morris's known political character and principles, that his appointment—especially at a period when the French nation was in a course of revolution from an arbitrary to a free government—would tend to discountenance the republican cause there and at home, and otherwise weaken, and greatly to our prejudice, the connection subsisting between the two countries. The second took place when Mr. Jay was nominated to Great Britain; which nomination, too, I opposed, because . . . I was of opinion we could not adopt such a measure consistently either with propriety or any reasonable prospect of adequate success. . . . and, lastly, because I also thought from a variety of considerations, that it would be difficult to find, within the limits of the United States, a person who was more likely to improve, to the greatest possible extent, the mischief to which the measure naturally exposed us. This last example took place only a few weeks before my appointment . . ." Under these circumstances, satisfactory results could hardly be expected from the Monroe mission; yet it is but fair to state that Washington offered the post to others before the selection of Monroe, and that the latter lost his head to a degree which could not have been anticipated.



In the choice of his successor, Washington was more fortunate. General Charles Cotesworth Pinckney was a man from whom good results might well be expected. He was able, honest, inflexible, and in sympathy with the administration. His instructions are interesting. After a brief sketch of the relations existing between France and the United States, the object of the mission is stated as follows: "Faithfully to represent the disposition of the government and people of the United States (for their disposition is one), to remove jealousies, and to obviate complaints, by showing that they are groundless, to restore that mutual confidence which has been so unfortunately and injudiciously impaired, and to explain the relative interests of both countries, and the real sentiment of your own, are the immediate objects of your mission."

With these good intentions, General Pinckney arrived in France on November 15, 1796. The French government, however, declined to receive him. On the 11th of December, 1796, Mr. Monroe received notice that the Directory would "not acknowledge nor receive another minister plenipotentiary from the United States, until after the redress of grievances demanded of the American government, and which the French Republic has a right to expect from it." This was a clap of thunder from a clear sky, but the worst, as far as Minister Pinckney was personally concerned, was yet to come. General Pinckney was subsequently informed by M. Geraudet, chief secretary in the department of foreign affairs, that there was a law forbidding strangers to remain in France without the permission of the government. He further assured Mr. Pinckney that the necessary permission would not be granted in his case, and that as a consequence it would be imperative for him to quit France. No time limit was set for his departure, yet the secretary did intimate that the minister of police, who had charge of such matters, would probably take the case in hand. It is almost unnecessary to state that the action of France was not only discourteous but entirely without the warrant of law.

General Pinckney was not a "stranger" in France, but the accredited representative of a foreign country, and as such, whether received or not, was entitled to the protection of international law. He was not a subject for the cognizance of the minister of police.

Early in February, 1797, Pinckney received formal notice to leave France. On the 5th of that month he set out for Holland, after having passed two months of humiliation in Paris.

The reasons for this discourtesy toward Pinckney and the United States are not far to seek. France, for obvious reasons, was much attached to Monroe, and was not pleased that he was superseded by a man in sympathy with the Washington administration. This feeling was evident when the news of Monroe's recall reached Paris. On his departure from official life, the Directory tendered him a farewell which was an insult to the United States. Then, too, the election of Adams over Jefferson was highly displeasing to the Directory, and, in addition to refusing to receive our minister, that body proceeded to pass additional oppressive decrees against American commerce.

Intelligence travelled slowly in those days, but rumors came to the United States early in March that Pinckney would not be received. Soon more definite intelligence began to arrive. When it was known that Pinckney had been commanded to leave France, and that our vessels were being seized under the authority of the French government, President Adams called a special session of Congress to meet on the 15th of May, 1797. His message delivered to Congress on the 16th is decidedly more interesting than his inaugural address of two months before. He recited to Congress the humiliating facts connected with the Pinckney mission and warned that body that there was grave danger of a war with France. In condemning the action of that country, he said: "The refusal on the part of France to receive our minister, is then the denial of a right; but the refusal to receive him until we have acceded to

their demands without discussion and without investigation, is to treat us neither as allies, nor as friends, nor as a sovereign State." He referred also to the leave-taking of Monroe, and declared that the sentiments of the French President on that occasion were "more alarming than the refusal of a minister, more dangerous to our independence and union, and at the same time studiously marked with indignities towards the government of the United States." He saw in this speech an attempt to alienate the people of the United States from the government. Then he flashed out thus: "Such attempts ought to be repelled with a decision which shall convince France and the world that we are not a degraded people, humiliated under a colonial spirit of fear and sense of inferiority, fitted to be the miserable instruments of foreign influence, and regardless of national honor, character, and interest." Notwithstanding these national insults, the President said that he was desirous of maintaining peace if possible, and to that end he would send a commission to France. "If we have committed errors," he continued, "and these can be demonstrated, we shall be willing to correct them . . . and equal measures of justice, we have a right to expect from France, and every other nation." In the meantime he was not unmindful of the fact that war might result despite his best efforts to the contrary. To meet this possible contingency, he advocated the construction of a navy, additions to the regular artillery and cavalry, and arrangements for forming a provisional army. He also urged the "revision of the laws for organizing, arming, and disciplining the militia." He believed, evidently, that the best way to secure peace was to prepare for war. He also advocated neutrality, and asked the support of the people in the crisis. The message was a strong paper and aroused no little enthusiasm.

The most interesting part of the message to us at the present moment is that in which the President expressed his determination to appoint a commission to France. When it became known that in all probability Pinckney

would not be received, Adams thought of a composite mission of influential men. He discussed the matter with Jefferson, and even suggested that the Vice-President himself should constitute one member of the commission. It was agreed later that this plan was not advisable, and Jefferson was delegated to request Madison to serve. If Madison had consented, Hamilton would have been appointed also, but Madison declined and the President proposed to appoint General Pinckney, Elbridge Gerry, of Massachusetts, and John Marshall, of Virginia. Some of the members of the Cabinet objected to the appointment of Gerry, as they preferred a commission made up entirely of Federalists. Adams yielded and named Francis Dana, of Massachusetts, in the place of Gerry. Upon Dana's refusal, however, Adams named Gerry and insisted upon the appointment. The Senate confirmed the nominations, and Gerry and Marshall made ready for their departure.

The appointments were made in June, 1797, and in mid-summer of the same year Gerry and Marshall sailed on different ships to meet Pinckney, the third member, in Holland. In the fall the three men went to Paris and reported to M. Talleyrand, the foreign minister, to deliver their credentials. Talleyrand carried himself throughout the entire negotiations with his characteristic duplicity. The Commissioners, although not accorded an official hearing, were received somewhat cordially at first, and then very coldly, and nothing was accomplished. They were impatient and disappointed. Talleyrand had spent some time in refuge in America and was personally acquainted with Gerry, and hence supposed to be somewhat favorably disposed toward the United States. At length, on the 18th of October, 1797, the startling disclosure came. A messenger from Talleyrand stated to the commissioners that it would be necessary for them to pay a specified sum of money to Talleyrand and certain members of the Directory before they could obtain a hearing. He explained that the Directory, and two members in particular, were seriously displeased with certain

passages of the President's speech, and that before the embassy could be received, these passages would have to be modified, a loan made to France, and in addition "a sum of money was required for the pocket of the Directory and ministers which would be at the disposal of M. Talleyrand." The Frenchman was unable to point out the objectionable passages in the President's speech, neither did he know how large a loan his country stood in need of, but in regard to the bribe he could speak positively, and mentioned that "the *douceur* for the pocket was twelve hundred thousand livres," about £50,000. Three days later more money was asked for in addition to the £50,000, "to avert the demand concerning the President's speech." Gerry, depending upon his personal acquaintance with the French minister, obtained a private conference with him, but to no avail. The mercenary trait was uppermost, and Talleyrand suggested that money would be the only reparation for the offensive passages in the President's speech. Several other interviews, all of the same tenor, were held with the representatives of Talleyrand, afterwards designated in the official correspondence as W. X. Y. and Z. On the 29th of October, X. said that without the money the commissioners would "be obliged to quit Paris," and that they "ought to consider the consequences; the property of the Americans would be confiscated, and their vessels in port embargoed." "Gentlemen," said X., "You do not speak to the point. It is money. It is expected that you will offer money."—"We have spoken to that point," said the envoys, "very explicitly."—"No," said X., "You have not. What is your answer?"—"It is No! No! not a sixpence." This brought matters to a standstill. It was vain for the American envoys to discuss the ethics of the matter, or to explain that their instructions would not permit them to discuss the payment of money or the granting of a loan. The Directory, incensed at the failure to extort a bribe, passed a new decree against our commerce, in January, 1798. On the 27th of the same month, the envoys, after three months

of unsuccessful efforts to obtain an official and direct interview with Talleyrand, addressed an able and comprehensive letter to him in which the matters at issue between the two countries were reviewed. The communication closed with the following dignified statement: "Perceiving no probability of being allowed to enter, in the usual forms, on those discussions which might tend to restore harmony between the two republics, they have deemed it most advisable, even under the circumstances of informality which attend the measure, to address to your government, through you, this candid review of the conduct, and this true representation of the statements and wishes of the government of the United States. They pray that it may be received in the temper with which it is written, and considered as an additional effort, growing out of a disposition, common to the government and people of America, to cultivate and restore, if it be possible, harmony between the two republics. If, Citizen Minister, there remains a hope that these desirable objects can be effected by any means which the United States have authorized, the undersigned will still solicit, and will still respectfully attend, the development of those means.

"If, on the contrary, no such hope remains, they have only to pray that their return to their own country may be facilitated; and they will leave France with the most deep-felt regret, that neither the real and sincere friendship which the government of the United States has so uniformly and unequivocally displayed for this great republic, nor its continued efforts to demonstrate the purity of its conduct and intentions, can protect its citizens, or preserve them from the calamities which they have sought, by a just and upright conduct, to avert."

This letter resulted only in two very unsatisfactory interviews with Talleyrand; but it did call forth a reply from the foreign minister on the 18th of March, 1798, which terminated the negotiations. "It is therefore," said Talleyrand, "only in order to smoothe the way of discussion that the

undersigned has entered into the preceding explanations. It is with the same view that he declares to the commissioners and envoys extraordinary, that, notwithstanding the kind of prejudice that has been entertained with respect to them, the Executive Directory is disposed to treat with that one of the three, whose opinions, presumed to be more impartial, promise in the course of the explanation more of that reciprocal confidence which is indispensable." In other words, Talleyrand was disposed to treat with Gerry, but not with Pinckney and Marshall. Gerry had formerly been an anti-Federalist and was now a Republican, while his colleagues were Federalists. He also had some acquaintance with Talleyrand. Because of these facts he was presumed to be more favorably disposed toward France than were his colleagues. It was for this reason that Talleyrand sought on various occasions to detach him from the other members of the embassy. This arrangement was, of course, impossible, and Pinckney and Marshall withdrew from the negotiations. Marshall got his passports on the 16th of April and went home, while Pinckney went to the south of France to remain for a time with a sick daughter. The conduct of the two men was eminently justifiable; indeed, there was no alternative for them, and their actions were approved by the home government. In fact, a despatch from the United States, dated March 23, 1798, and written before the termination of the mission was reported in America, contained some very explicit instructions which accorded nicely with the actions of Pinckney and Marshall. The commissioners were directed to "remain and expedite the completion of the treaty," in case they were treating with persons authorized by the government of France; but they were directed "to break off the negotiations, demand" their "passports, and return home," in case they "discovered a clear design to procrastinate." They were warned that suspense was "ruinous to the essential interests" of the country. The commissioners were also directed to demand their passports and return in case they had not yet been received, or in case







John Adams.

*Two portraits: the first, after the painting by Gilbert Stuart; the second, after the pastel by James Sharpless.*

they were not "in treaty with persons duly authorized by the Directory, with full and equal powers . . ." With regard to a monetary consideration the instructions were clear and positive. "In no event is a treaty to be purchased with money, by loan or otherwise." It will be noted that although these instructions did not reach France until after the commission was terminated, the commissioners, with the exception of Gerry, conducted themselves in exact accordance with the wishes of the home government.

On the 23d of November, 1797, President Adams made a tentative report on the French mission in his message to Congress. He knew nothing at the time, of course, of the disgraceful Talleyrand episode which has just been narrated, and could report only that the three commissioners had gone to Paris to open the negotiations. He dismissed the French mission with these comments and proceeded to the discussion of other matters.

The preliminary reports which came from the commissioners in Paris were not at all reassuring, and President Adams, anticipating the failure of the mission, began to prepare for that event. On January 24, 1798, he propounded to the Cabinet a series of questions in regard to French affairs. He expressed a lack of confidence in the outcome of the mission and asked for the opinions of the members of the Cabinet as to recommendations to be made to Congress in the event of failure on the part of the envoys. Should war be declared, should an embargo be placed, or should some other course be recommended to Congress? Mr. McHenry, the secretary of war, submitted a concise and definite reply in writing to the above interrogatories. He stated that, in his opinion, a declaration of war was not advisable, as there was a marked aversion to hostilities among the people; neither was an embargo expedient. He would, however, suspend the treaties with France and enter actively upon defensive measures. To this end he would give American merchant ships the right to arm themselves for purposes of defence; he would authorize a loan, strengthen

the navy, and raise an army of sixteen thousand men and an auxiliary one of twenty thousand. Finally, a day of "National fast" was deemed expedient and proper. Affairs were evidently assuming a serious aspect.

When the narrative of the French mission was interrupted, Marshall was on his way home, Pinckney in the south of France, and the deluded Gerry still in communication with Talleyrand. When his two colleagues decided to abandon the negotiations, Gerry made the fatal error—an error of judgment, undoubtedly—of remaining in France and in communication with Talleyrand. His defence was that he feared a declaration of war in case he departed. Talleyrand, throughout the negotiations,—if such they may be called—had shown a marked partiality for him, and he probably flattered himself with the thought that he would be able to accomplish what the embassy had failed to do. It should be said to his credit, too, that he did not attempt to appear in any other than a private capacity. When Talleyrand wrote to him proposing "a day upon which to resume our reciprocal communications upon the interests of the French Republic and the United States of America," he said in reply: "I can only, then, confer informally, and unaccredited, on any subject respecting our mission, and communicate to the government of the United States the result of such conferences; being, in my individual capacity unauthorized to give them an official stamp." His grave error was in "conferring" at all; and, although his biographer has made an attempt to gloss over his indiscretion, it must be admitted that the attempt was vain and that the stinging rebuke administered by the secretary of state on the 25th of June was fully warranted. "The respect due to yourselves and to your country," said Secretary Pickering, "irresistibly required that you turn your backs to a government that treated both with contempt, a contempt not diminished but aggravated by the flattering but insidious distinction in your favor, in disparagement of men of such respectable talents, untainted honor, and pure patriotism as

Generals Pinckney and Marshall, and in whom their government and country reposed entire confidence; and especially when the real object of the distinction was to enable the French government, trampling on the authority and dignity of our own, to designate an envoy with whom they would condescend to negotiate." After these words of censure the recall was stated in the following terms: "It is presumed that you will consider the instructions of the 23d of March, . . . as an effectual recall; lest, however, by any possibility, those instructions should not have reached you, and you should still be in France, I am directed by the President to transmit you this letter, and to inform you that you are to consider it as a positive letter of recall." Poor Gerry was in disgrace. His conduct was undoubtedly deserving of censure, but it is probably too much to say, as Trescot does, that it "was false to himself, faithless to his colleagues, and fatal to the honor and interest of his country."

Early in March, 1798, the news of the failure of the French mission came to the United States. On the 19th of that month the information was transmitted to Congress by the President, and steps were immediately taken to put the country on a war footing. At the instigation of Hamilton, and probably for political purposes, a resolution was passed by Congress asking the President to submit the papers in the case of the French mission. To this request Adams very readily acceded, and on the 3d of April, 1798, he submitted the entire correspondence, except that the letters W. X. Y. and Z. took the places of the names of Talleyrand's emissaries. The country was astounded at the venality and the brazenness of the entire transaction. Both the President and the people were fired with a patriotic indignation; and when John Marshall, one of the envoys, arrived in the United States in June, bringing corroborative testimony and many distressing details, this indignation was not lessened. A few days after the arrival of Marshall, June 21, 1798, the President submitted some few additional details

to Congress and informed that body that he considered the negotiations at an end. He concluded this message with that famous and patriotic sentence: "I will never send another minister to France, without assurances that he will be received, respected and honored as the representative of a great, free, powerful, and independent nation." This sentence found a responsive echo in the breasts of the people and Adams was popular as never before or since. The radical Republicans were silenced by the X. Y. Z. revelations, and the moderates went over to the Federalist side in the House of Representatives. The Federalists were now in command in both houses of Congress and the President was assured the most hearty support.

During the summer of 1798, preparations for hostilities became active. On the 7th of July Congress declared the treaty of 1778 with France not binding on the United States, and authorized American war vessels to attack French cruisers. The French cruisers were committing depredations upon American commerce, and a policy of retaliation was entered upon. Early in 1779 (February 9th) the American cruiser *Constellation* captured the French *Insurgente*, and a state of war existed between the two nations in everything but name. On the 17th of July, 1798, President Adams informed the Senate, and congratulated them upon the fact, that Washington had accepted the appointment "as Lieutenant-General and Commander-in-chief of the army." The decks were cleared for action and for a time war seemed inevitable. Adams was heartily in favor of a peaceful solution of the difficulty, as he looked upon war as a national calamity, but such a happy issue seemed now remote. In fact, President Adams said in his speech before Congress, delivered on the 8th of December, 1798: "But to send another minister without more determinate assurances that he would be received, would be an act of humiliation to which the United States ought not to submit. It must, therefore, be left to France, if she is indeed desirous of accommodation, to take the requisite

steps." Party feeling subsided as patriotic fervor grew stronger, and everyone was willing and anxious to hold up the President's hands. *Hail Columbia* was written at this time, and Joseph Story, then a student at Harvard, wrote an ode which was sung in the college chapel.

"Shall Gallia's clan our coast invade,  
With hellish outrage scourge the main,  
Insult our nation's neutral trade,  
And we not dare our rights maintain?  
Rise, united Harvard's band,  
Rise, the bulwark of our land."

The writer of these lines later became the celebrated jurist and the author of the *Commentaries on the Constitution*.

It was at this juncture that President Adams took a step which alienated from him a large part of the people. While the war party in the United States was planning conquests in the coming war, to embrace Florida, New Orleans, and even provinces of South America; while it was being proposed to throw neutrality to the winds and to form an alliance with Great Britain against France and Spain, affairs took a very unexpected turn. Adams was from the first a consistent advocate of peace on honorable terms, and now it appeared that France was really not desirous of provoking a war with the United States. The Directory was weak and venal; Talleyrand was shrewd but unscrupulous, and all were in the business for base purposes. Talleyrand was amazed when the papers in the X. Y. Z. affair were made public. He protested that he knew nothing of bribes, and was confident that there was a great mistake somewhere. France certainly wished the United States well and would receive her ministers at any time with the greatest of pleasure. Mr. Gerry, upon his return from France early in August, 1798, brought the news of this change of heart on the part of Talleyrand. A few days later intelligence of the same character came from another source. A letter from William Vans Murray, American minister at The Hague,

informed Adams that Talleyrand had made advances indirectly to him for the purpose of taking up the negotiations again. M. Pichon, secretary of the French legation at The Hague, undoubtedly under instructions from Talleyrand, had broached the matter to Murray. Adams in his desire for peace, began to consider the altered situation. M. Pichon and Mr. Murray continued their conferences at The Hague, and the latter kept President Adams informed by letter in regard to the sentiments of Talleyrand. Finally, in 1799, probably early in February, Mr. Adams received a letter from Murray enclosing a despatch from Talleyrand, in which the latter gave assurance that an envoy from the United States to France would be received with all the regard due to a representative of a free, independent, and powerful nation.

Although there may be a touch of sarcasm in this note of assurance, as its wording resembles that of the famous sentence in Adams's message of a short time before, nevertheless it was taken by Mr. Adams at its face value; and on the 18th of February, 1799, he nominated William Vans Murray to be minister plenipotentiary to France, with the proviso, however, that "he shall not go to France without direct and unequivocal assurances from the French government, signified by their minister of foreign relations, that he shall be received in character, shall enjoy the privileges attached to his character by the law of nations, and that a minister of equal rank, title, and powers, shall be appointed to treat with him, to discuss and conclude all controversies between the two republics by a new treaty." Mr. Adams made the appointment without asking the advice of his Cabinet, as he knew that his official advisers would be opposed to the entire proceeding. The appointment created consternation among the Federalist leaders. Mr. Pickering, in a letter to Hamilton, said that he was "shocked and grieved" at the "degrading and mischievous" act. Sedgwick said that the step was such as might be expected "had the foulest heart and the ablest head in the world been permitted to select the most embarrassing and ruinous measure."

The Senate threatened to throw out the nomination; and when it became evident that there were some objections to Murray of a personal nature in addition to the unpopularity of the mission, Mr. Adams determined upon another stroke. On February 25th, one week after the nomination of Murray, and before the Senate committee on nominations had made its report, the President nominated Chief Justice Oliver Ellsworth, Patrick Henry, and William Vans Murray to be envoys to France for the purpose of adjusting the differences between the two countries. In his message to the Senate, making the nominations, Adams expressed the opinion that a commission would "give more general satisfaction to the legislature and to the nation, and perhaps better answer the purpose we have in view." Mr. Henry, in a very courteous letter to Mr. Adams, declined the appointment because of the infirmities of old age; and Governor William R. Davie, of North Carolina, was appointed in his stead. Mr. Davie and Chief Justice Ellsworth were not to embark for Europe until assurances should be received from the French government that the embassy would be properly received and be accorded all due respect. Many of the Federalists were utterly opposed to the French mission, but Hamilton was favorable to it, and the nominations were all ratified by the Senate. It only remained now for Talleyrand to give the proper assurances. On the 6th of March the secretary of state, Mr. Pickering, wrote to Minister Murray, telling him what had been done and informing him of the conditions upon which the two members of the embassy, who were in the United States, would embark for France. The substance of the despatch was promptly transmitted by Murray to M. Talleyrand, and on the 12th of May, 1799, the French foreign minister replied in the following terms: "Be pleased to transmit to your colleagues, and to receive yourself, the frank and explicit assurance that it (the government) will receive the envoys of the United States in the official character with which they are invested; that they shall enjoy all the prerogatives which



are attached to it by the law of nations, and that one or more ministers shall be duly authorized to treat with them." Talleyrand also said some other things about the conduct of the Americans in the recent negotiations, but Mr. Adams chose not to take cognizance of them. On July 30th the above dispatch reached the state department, and Mr. Adams gave orders that the instructions for the envoys be prepared. Mr. Pickering, who was not in sympathy with the mission, managed to consume five weeks in the preparation of these instructions. By this time, another change had taken place in the government of France. Napoleon had returned from Egypt, had overthrown the Directory, and had set up the Consulate, with himself as First Consul. Talleyrand also had resigned, and a temporary postponement of the embarkation seemed wise. In the meantime, strong pressure was brought to bear on Mr. Adams to defeat the French mission. Pickering, Wolcott, and McHenry opposed the project strenuously, and Ellsworth in a milder sort of way. But the sturdy oak was unbending. He called a Cabinet meeting for the evening of October 15th, to discuss the instructions, and gave orders early next morning, and without previous warning, that a vessel was to be ready not later than November 1st to convey the commissioners to Europe. They sailed on the 5th, and touched at La Coruña, in Spain, not wishing to sail directly for a French port because of the European war. From La Coruña they forwarded a letter to Paris, notifying the government of their arrival, and requesting the necessary passports. The reply was prompt and exceedingly courteous. "I have received," wrote the minister of exterior relations, "the letter you did me the honor to write me from Corunna. I regret exceedingly that a tedious and painful voyage should have so long retarded your arrival in France; you are expected with impatience, you shall be received with eagerness." On the 30th of March, 1800, Mr. Murray joined his colleagues in Paris and a few days later an audience was had with the First Consul. "We were received," the envoys wrote,

"with the respect, due to the character, which we had the honor to bear." At this audience M. Talleyrand, again in office, informed the envoys that a commission of three ministers plenipotentiary had been appointed to negotiate with them. This commission was composed of MM. Fleurieu and Roederer and Joseph Bonaparte, the brother of the First Consul.

The instructions given to the American envoys contained a brief review of the recent difficulties with France and a condemnation of French conduct in that connection. The attention of the envoys was called to the assurances given by the French government. "It now belongs to you, gentlemen, that this assurance be verified. Your country will not submit to any new indignity or neglect." In case the ministers were not properly received, and the negotiations undertaken in a business-like way, they were directed to relinquish their mission, demand their passports, and return home. It was urged, too, that the negotiations "be concluded in such time" that the envoys could "embark for the United States by the 1st of next April." More specifically, the envoys were instructed to insist, as a prerequisite to any treaty, upon a stipulation for indemnity for all captures made contrary to the law of nations, and in violation of the treaty of 1778, while that treaty was operative. It will be remembered that the American Congress had, on July 7, 1798, declared that this treaty should be no longer in force—but by what warrant of international law this step was taken it is not clear. The United States now sought relief for condemnations and captures prior to May 7, 1778, and specified that these indemnities be determined by a joint commission. Detailed instructions were then given for the negotiation of a political and commercial treaty. The document closed with the following specific directions:

"The following points are to be considered ultimated:

"1. That an article be inserted for establishing a board with suitable powers, to hear and determine the claims of our

citizens for the causes hereinbefore expressed, and binding France to pay or secure payment of the sums which shall be awarded.

"2. That the treaties and Consular Convention, declared to be no longer obligatory by act of Congress, be not, in whole or in part, revived by the new treaty; but that all engagements, to which the United States are to become parties, be specified in the new treaty.

"3. That no guaranty of the whole or any part of the dominion of France be stipulated, nor any engagement made in the nature of an alliance.

"4. That no aid or loan be promised in any form whatever.

"5. That no engagement be made inconsistent with the obligations of any prior treaty, and, as it may respect our treaty with Great Britain, the instruction herein . . . is to be particularly observed.

"6. That no stipulation be made granting powers to consuls or others, under color of which tribunals can be established within our jurisdiction, or personal privileges be claimed by Frenchmen, incompatible with the complete sovereignty of the United States in matters of policy, commerce, and government.

"7. That the duration of the proposed treaty be limited to twelve years, at furthest, from the day of the exchange of the ratifications, with the exceptions respecting its permanence in certain cases specified" in the instructions.

The negotiations so auspiciously begun, did not proceed with a rapidity satisfactory to the American envoys, and in May in a report to the secretary of state they wrote: "our success is yet doubtful." They did, however, succeed in making a treaty. It would be wearisome and not profitable for us to scrutinize the numerous notes which passed between the two commissions, during the progress of the negotiations. Let it suffice to say that an agreement was reached, and duly signed on the 30th of September, 1800. The provisions of the treaty were quite general in character and by no means unfavorable to the United States. The

"public ships," which had been taken, were to be returned; property captured, but not yet condemned, was to be mutually restored; individual and national debts were to be paid, but the provision was "not to extend to indemnities claimed on account of captures or confiscations." In waiving these claims for indemnity it was held that the United States assumed the obligation of payment. This view gave rise to the famous "French Spoliation Claims," which have been only recently adjusted. Commerce between the two nations was to be free, "and in general, the two parties" were to "enjoy in the ports of each other, in regard to commerce and navigation, the privileges of the most favored nation;" debts were "not to be sequestered nor confiscated in the event of war;" neutral commerce if not "contraband of war" was safeguarded; "contraband of war" was defined to include all military and naval supplies, and it was specified that the ship and the residue of the cargo were not to be "infected" by the presence of the contraband goods; free ships were to make free goods, contraband of war excepted.

The treaty was not a popular one. It could not have been such under the circumstances. A treaty between a strong and a weak nation can never be popular in the latter country. The commissioners themselves felt that they did not obtain that which abstract justice would demand. "If . . . less is at present obtained," they said, "than justice requires, or than the policy of France should have granted, the undersigned trust that the sincerity and patience of their efforts to obtain all that their country had a right to demand, will not be drawn in question." The comments of Mr. Trescot in his *American Diplomatic History*, are of interest in this connection. "Such was the convention; and such as it was," says Mr. Trescot, "it could not, either in its argument or its result, be claimed as a diplomatic triumph. . . . Like the English treaty, which in many features it resembled, it was at the time a positive advantage. It is true that it merely temporized, but to

temporize wisely is sometimes the skilful policy. It unquestionably saved the United States from war; for had the negotiators returned without succeeding in any arrangement, it is difficult to see how war could have been avoided, in face of the hostile preparations and energetic language of the government. The United States had openly prepared for war, and declared that this mission was its final effort at conciliation; if that failed, the honor of the country had no alternative. Disastrous as such a necessity would have been at the outset of the mission, it would have been worse at its close. The campaign of 1800, illustrated by the victories of Marengo and Hohenlinden, had scattered the enemies of France. The treaty of Luneville made her mistress of Europe. . . . Had this state of things found the United States in open hostility with France, who can anticipate the result? This convention avoided these difficult issues, and it is a curious fact, worthy of notice, that the treaty of Luneville, which aggrandized to such vast extent the power of France, enabled her to take Louisiana from Spain, while our convention, forced on us by the contrast of our weakness with such strength, enabled us, by avoiding the cost and suffering of war, to move on our path slowly but surely, and to purchase that very Louisiana from the power we could not have resisted. For it scarcely needs an argument to show, that a war with France, in 1800, would have forbidden all hope of the acquisition of Louisiana in 1806 [1803]. Another great benefit resulting from this convention was, that it saved the necessity of an extreme policy just at a most critical time in the domestic history of the country. For if the ministers had come home without effecting even an armistice, Mr. Adams would have been going out of office, and in the few remaining months of his administration, could have pursued no vigorous line of conduct; while Mr. Jefferson would not yet have assumed the responsibility of office, and would naturally have regarded the war as an odious inheritance from an administration whose mischievous career he had been elected to

check. Between the two parties, the interests as well as the character of the country would have been in serious danger."

Such were the relations between the United States and France during the presidency of John Adams; the effects of these relations upon the domestic affairs of the country, and particularly upon the Federalist party, remain to be noted in the succeeding chapter.



## CHAPTER XV

### *PARTY CONTENTIONS*

PARTY contentions have never been more bitter in the United States than during the presidency of John Adams. The Federalists and Republicans looked upon each other with undisguised distrust and contempt, and the differences were not merely political, but were personal as well. "Men who had been intimate all their lives," said Jefferson, "cross the street to avoid meeting, and turn their heads another way lest they should be obliged to touch their hats." In addition to this the contentions within the Federalist party itself were bitter in the extreme. As Rome was not large enough for the ambitions of Cæsar and Pompey, so also the Federalist party was not large enough for John Adams and Alexander Hamilton. It will be seen that the contentions between these two men did much to wreck the Federalist party—the party of the Constitution.

Jefferson's view of the situation in 1796 is rather gloomily set forth in his famous letter, written on April 24th of that year, to his friend Mazzei, then in Italy. "The aspect of our politics," said Jefferson, "has wonderfully changed since you left us. In place of that noble love of liberty and republican government which carried us triumphantly through the war, an Anglican monarchical aristocratical party has sprung up, whose avowed object is to draw over the substance, as they have already done the forms, of the British government. The main body of our citizens, however, remain true to their republican principles; the whole



landed interest is republican, and so is a great mass of talents. Against us are the Executive, the Judiciary, two out of three branches of the Legislature, all the officers of the government, all who want to be officers, all timid men who prefer the calm of despotism to the boisterous sea of liberty, British merchants and Americans trading on British capital, speculators and holders in the banks and public funds, a contrivance invented for the purposes of corruption, and for assimilating us in all things to the rotten as well as the sound parts of the British model. It would give you a fever were I to name to you the apostates who have gone over to these heresies, men who were Samsons in the field and Solomons in the council, but who have had their heads shorn by the harlot, England. In short, we are likely to preserve the liberty we have obtained only by unremitting labors and perils. But we shall preserve it; and our mass of weight and wealth on the good side is so great, as to leave no danger that force will ever be attempted against us. We have only to awake and snap the Lilliputian cords with which they have been entangling us during the first sleep which succeeded our labors." It may be that the pessimistic character of this letter was due, to some extent, to Jefferson's poor health at this particular time. In the concluding lines of the letter he remarked: "I begin to feel the effects of age. My health has suddenly broken down, with symptoms which give me to believe I shall not have much to encounter of the *tedium vitæ*." However, his distrust of the Federalists is just as forcibly expressed elsewhere in his correspondence of this period. Hamilton, on the other hand, looked upon the Republicans as an ignorant and irresponsible rabble, clamoring for power; and he did not hesitate to express himself to that effect. It need not be said that the publication of Jefferson's letter to Mazzei, in the summer of 1797, did not serve to allay the contentions between the two parties.

Mr. Adams made the first serious mistake of his administration in retaining the Cabinet of his predecessor. It

seemed at the time to be the proper and courteous thing to do. There was a common understanding that the general policy of Washington's administration was to be continued in that of Adams. To this end the retention of the old Cabinet seemed advisable. It was, however, a very grave error. The secretaries, Pickering, McHenry, and Wolcott, were not loyal to Adams, but connived and intrigued against him in a most unpardonable way. He was, too, apparently ignorant of this fact during the greater part of his administration. Before his inauguration he wrote: "Pickering and all his colleagues are as much attached to me as I desire. I have no jealousies from that quarter." This might have been true at the time, but if so, the attitude of the secretaries speedily changed. In their minds, Adams could never take the place of Washington, and the secretaries looked upon themselves as the special custodians of Washington's governmental policy. They considered themselves to be not merely advisers, but a part of the executive department. They were small men, and did not appreciate their relative importance in the government. Then, too, they were under the influence of Hamilton, which was baneful at this time. They looked to him rather than to Adams as the true leader of the Federalist party. While serving Hamilton, the bitter enemy of the President, they could not be loyal to their chief. One is painfully surprised—and especially is this true in the case of Pickering—that the secretaries could have consented to remain in the Cabinet under the circumstances. There can be no justification for their conduct in this respect, and Hamilton, too, is indictable before the bar of public opinion for receiving stolen goods, for his tools supplied him with inside information from the government to be used against the President.

Gradually the truth began to dawn upon Adams, he saw, when much mischief had been done, that his secretaries were playing him false, and that a reorganization of the Cabinet was imperative, but he probably never knew the full extent of the intrigues against him on the part of his official family.

On May 5, 1800, in a stormy interview, he called for the resignation of McHenry, who was incompetent, in addition to being disloyal. Pickering also was asked to resign, and upon his refusal to comply with the request, Adams addressed the following letter to him on May 12, 1800: "Sir,—Divers causes and considerations essential to the administration of the government, in my judgment, requiring a change in the Department of State, you are hereby discharged from any further service as Secretary of State." Adams bore enmity toward Pickering for many years after this curt dismissal. In 1808 he wrote of him: "He is a man in a mask, sometimes of silk, sometimes of iron, sometimes of brass, and he can change them very suddenly, and with some dexterity . . . Under the simple appearance of a bald head and straight hair, and under profession of profound republicanism, he controls an ardent ambition, envious of every superior, and impatient of obscurity." The ill-will of Adams, however, does not seem to have blighted the political ambitions of Pickering, as he was twice elected to the United States Senate after his experience in the Cabinet. In the meantime, Wolcott remained in the Cabinet, Adams thinking him loyal, and he himself not professing to be otherwise. He continued also to retail the secrets of the Treasury Department to Hamilton to be used for political purposes against Adams. Finally, late in 1800, he tendered his resignation to take effect on the 1st of January of the following year. Adams was thus under the embarrassing necessity of securing a man to take the treasury portfolio for two months.

John Marshall, of Virginia, succeeded Pickering in the State Department, and Samuel Dexter of Massachusetts became secretary of war. Both were good men and rendered commendable service. After the resignation of Secretary Wolcott, Mr. Dexter was transferred to the Treasury Department, and Roger Griswold, of Connecticut, became secretary of war.

This reorganization of the Cabinet was not effected without increasing the breach in the Federalist party, which

was still further widened by some army appointments made in the summer of 1798, when war with France seemed probable. As noted in a previous chapter, Washington had been appointed Commander-in-chief. He accepted the appointment with the understanding that he should select the officers next below him. He selected Hamilton, C. C. Pinckney, and Knox, and these men were duly nominated and confirmed in the order indicated. All three were Major Generals, and a question immediately arose as to their respective ranks. Hamilton's friends claimed a priority for him on the ground that the rank of the men should conform to the order of their nomination and ratification. The friends of Knox, on the other hand, contended that the rank in this instance should be determined by the rank of the men in the Revolution. This would place Knox before the other two. The matter was of some importance, since Washington was not expected, in the event of war, to take the field in person, and the man second in command would thus have an excellent opportunity to win laurels. The matter of precedence was decided by Washington when he indicated a preference for Hamilton. Adams did not greatly relish the exaltation of his arch-enemy, yet he complied with the wishes of Washington. In one respect the episode was of no consequence, as war with France was averted; but in another it was a matter of importance as it hastened the downfall of the Federalist party.

The threatened war with France also led to the establishment of the Navy Department. Hitherto all military and naval affairs were under the control of the War Department, but at this time a differentiation seemed advisable. Benjamin Stoddert, of Maryland, was appointed secretary of the navy, and provisions were made, upon the advice of Adams, to strengthen that department. It should be noted that Adams was a most strenuous advocate of the navy at this time, while Jefferson for obvious reasons, took the opposite stand. They opposed each other as Themistocles

and Aristides did in Athens. When the war cloud vanished, the President was authorized, as the result of a shortsighted policy on the part of Congress, to sell all the vessels in the navy save thirteen.

Party feeling in the Adams administration reached its greatest intensity in the passage of the Naturalization Act, the Alien and the Sedition Acts, and the Virginia and Kentucky Resolutions of 1798 and 1799. In the political controversies of the time, the Federalists had been greatly irritated by the violent and vindictive strictures of the the Republican press. Many of the editors of these papers were foreigners and were for that reason more obnoxious to the party in power. The summer of 1798 seemed an especially favorable time to harry these "democratic scribblers" out of the land. On April 3, 1798, the President had sent the X. Y. Z. despatches to Congress, and on the 9th they were printed. The publication of the proceedings had aroused a wave of indignation against France, the French editors, and French sympathizers in general. The Federalists could not be magnanimous in their hour of victory, and determined to give their adversaries the finishing stroke. The first act passed with this end in view was the Naturalization Act of June 18, 1798. It was provided by this act that an alien must declare his intention to become a citizen of the United States at least five years before admission to such citizenship, and that he must have been a resident of the United States for fourteen years at least before being eligible to citizenship. There were some special exceptions made in the act in favor of certain aliens already in the United States. The term of residence necessary for citizenship had hitherto been five years, and was changed back to that period after the feeling against foreigners subsided. The object of the act was nominally to protect American institutions from an undue foreign influence, but in reality the chastisement of the Republicans and their allies was also an important consideration.

The Naturalization Act, however, was not very important from the standpoint of results. It could not be directly and

immediately effective against the enemies of the Federalists. It could not reach such men as Duane, Collot, William Cobbett, and others who had been imported by the Republicans. Hence other legislation was resorted to. The Alien Act, passed on June 25, 1798, was aimed at alien foreigners dangerous to the "peace and safety" of the United States. The pith of the act is contained in the following clause: "That it shall be lawful for the President of the United States at any time during the continuance of this act to order all such *aliens* as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States, within such time as shall be expressed in such order, . . . ." It was further provided that if an alien did not leave the United States upon order from the president, he was liable to imprisonment for three years and was forever debarred from becoming a citizen of the United States. If, however, an alien ordered to depart could prove to the satisfaction of the president that he was engaged in no intrigue against the government, the president might "grant a *license* to such alien to remain within the United States for such a time as he should think proper, and at such place as he may designate." The president was also empowered to put an alien under bond, and could revoke his license whenever he thought it proper to do so. It was also provided that if an alien were sent out of the United States and then returned, he should be liable to imprisonment at the pleasure of the president.

It will be noted that the president was the central figure throughout the entire act. In fact, the measure was a club put into his hands that he might belabor his enemies. It should be said, however, to the credit of Adams, that he never availed himself of the power thus conferred upon him. Aside from the intense feeling which it aroused, the act was of no practical importance, since it was enacted for two years only and was allowed to expire at the end of that time.

It was never renewed, as the Republicans under Jefferson soon came into power.

The Alien Enemies Act of July 6, 1798, was the next in order. This act provided that in time of war all males of fourteen years and upward, subjects of the hostile government, "shall be liable to be apprehended, restrained, secured and removed, as alien enemies." The execution of the act was left to the discretion of the president. This act is in force at the present time; and is not, in general, objectionable. It authorizes the president to issue proclamations for the removal of subjects of nations which are at war with the United States. The act aroused considerable opposition in 1798, but probably would not have done so under ordinary circumstances.

The Alien Enemies Act was followed eight days later, July 14, 1798, by the Sedition Act. The significant part of this act is the second section, reading as follows: "*And be it further enacted*, That if any person shall write, print, utter, or publish, or shall cause or procure to be written, printed, uttered, or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous, and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested, by the Constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States,

their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars and by imprisonment not exceeding two years." The law expired by limitation on the 3d of March, 1801, and was never revived. The primary object of the act was to silence the Republican editors. There were only a half-dozen prosecutions under it, but these were enough to make the act odious to a large part of the people. Callendar, the friend of Jefferson, was convicted under this act for saying, among other things: "Mr. Adams has only completed the scene of ignominy which Mr. Washington began." The diatribes of the Federalist papers, almost as violent as those of the Republican sheets, were unnoticed by the government. It need not be said that the adverse criticism of the government was not silenced, or even checked, by the Sedition Act. It was probably increased; and it was soon seen that the act was a gigantic blunder. It is true that all the offences mentioned in the Sedition Act were punishable under the common law, and in the State courts; but to exalt them in the form of a statute had the effect of a challenge. The matter then assumed an aggressive form and aroused the most determined and angry opposition. It was a petty, not a statesmanlike measure. To ignore the Republican attacks would have been the part of wisdom on the part of the Federalists, but to seek to suppress them by force was suicidal. Jefferson, the shrewdest political leader of his time, remarked correctly in one of his inaugurals that libel was impotent. And yet the measure was quite in harmony with the Federalist policy of repressing the masses by the strong arm of the law. In this connection it should be said that although Adams was the principal beneficiary under these laws, he was not the instigator of their passage. He signed them, and, in a general way, approved them, but showed little interest in their enforcement. In fact, after it became evident that they were mistakes, all disclaimed the



responsibility for their introduction and passage. They were, as John T. Morse, Jr., says, "foundlings." Mr. Adams, however, never changed his attitude towards them, and years later he declared the laws to be "constitutional, and salutary, if not necessary."

These repressive Federalist measures resulted in the passage of the famous Kentucky and Virginia Resolutions of 1798 and 1799. Jefferson and Madison were the principal authors of these resolutions, and by this means they protested against the government's "rod of iron," and denied the right of Congress to assume such vast powers.

The first set of Kentucky Resolutions was drafted by Jefferson, introduced into the legislature by John Breckenridge, and passed on November 16, 1798. The resolutions were, in the main, an argument against centralization and in favor of State Rights. The compact theory of the Constitution was emphasized, and it was held that the general government was not the judge of its own powers, but that each party to the compact was competent to judge for itself. It was declared that "Whenever the general government assumes undelegated powers, its acts are unauthorized, void, and of no force." The Sedition Act of July 14, 1798, was made the object of special condemnation, and was declared to be "altogether void and of no force." The contention in this case was that the States, and not Congress, had the power to punish the offences specified in the act. The punishment of these particular offences had not been delegated to Congress in the Constitution, and hence, it was held, that the right was reserved to the States, or to the people. It was also held that Congress was not competent to make a law "abridging the freedom of speech, or of the press," and hence that the Sedition law of July 14, 1798, "which does abridge the freedom of the press, is not law, but is altogether void and of no effect." The Alien Acts were also criticised and condemned. It was held that "alien friends" were under State and not national jurisdiction, and hence that the Act of June 25, 1798, "which assumed

power over friends not delegated by the Constitution, is not law, but is altogether void and of no force." The constitutional clause declaring "that the migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808," was invoked in behalf of the "alien friends." It was held that their removal from the United States was "equivalent to a prohibition of their migration." It was little less than ridiculous for Jefferson and his friends to seek shelter under this clause of the Constitution. Everyone knew, and Mr. Jefferson could not help knowing, that this particular clause referred exclusively to the migration and importation of slaves. In regard to some other points Jefferson was more logical. He held that it was not "due process of law" for the President to order a man out of the country and to imprison him in case he refused to comply with the order. He contended that a man charged with a misdemeanor was entitled to a "public trial by an impartial jury," and also that the judicial power was vested by the Constitution in the courts and could not be transferred to the President. It was decided to send the resolutions to the Kentucky representatives and senators, and also to the legislatures of the various States.

The Virginia Resolutions were passed in the following month, December 24, 1798. They were prepared by Madison, who probably had been in conference with Jefferson when the Kentucky Resolutions were under consideration, and were introduced by John Taylor. Madison was not a member of the Virginia Assembly at the time, but he used his influence in behalf of the resolutions. There was considerable opposition to their passage, but they finally passed the lower house by a vote of one hundred to sixty-three, and the upper by a vote of fourteen to three. The resolutions are, on the whole, more moderate and sane than those drafted by Jefferson, yet their general object was the same—to protest against the principles involved in the Alien and the Sedition Acts. The compact theory of the Constitution

was strongly emphasized; in fact, the word "compact" appears four times in the space of six lines in one part of the document. The Alien and the Sedition Acts were declared to be "infractions of the Constitution," and it was held that an indifference to these infractions "would mark a reproachful inconsistency and a criminal degeneracy." The doctrine of nullification, however, is not so prominent as in the Kentucky set.

About a year later, November 22, 1799, another short set of resolutions was passed by the legislature of Kentucky. These resolutions contain nothing new and are not particularly notable. They were called out by the uniformly unfavorable replies and comments of the various State legislatures in respect to the set of the previous year. The new resolutions did not attempt to re-argue the case, but lamented that "in the discussions of those interesting subjects, by sundry of the Legislatures of our sister States, unfounded suggestions, and uncandid insinuations, derogatory to the true character and principles of this Commonwealth have been substituted in place of fair reasoning and sound argument. Our opinions of these alarming measures of the General Government, together with our reasons for these opinions, were detailed with decency, and with temper, and submitted to the discussion and judgment of our fellow-citizens throughout the Union. Whether the like decency and temper have been observed in the answers of most of those States, who have denied or attempted to obviate the great truths contained in those resolutions, we have now only to submit to a candid world." The legislators then posed as martyrs "regardless of censure or calumniation," and as patriots "anxious only to escape the fangs of despotism." They made, however, a bold reiteration of the doctrine of nullification in the resolution: "That the several States who favored that instrument [the Constitution] being sovereign and independent, have the unquestionable right to judge of the infraction; and, *That a Nullification by those Sovereignities, of all unauthorized acts done under color of that instrument is*

*the rightful remedy.*" The offensive laws were again declared to be unconstitutional, and a "solemn PROTEST" was entered against them.

The reception of the Virginia and the Kentucky resolutions by the other States is a matter of interest. Seven of the fourteen States made replies and in every case the reply was an unfavorable one, in some cases decidedly so. Three other States—Maryland, New Jersey, and Pennsylvania—put themselves on record as being against the sentiment contained in the resolutions. The Delaware legislators dismissed the matter with contempt, saying: "That they consider the resolutions from the State of Virginia as a very unjustifiable interference with the general government and constitution of the United States, and of dangerous tendency, and, therefore, not fit subject for the further consideration of the General Assembly." The legislature of Rhode Island made an attack upon the resolutions and struck their most vulnerable point. They declared: "That, in the opinion of this legislature, the second section of the third article of the Constitution of the United States, in these words, to wit, 'the judicial power shall extend to all cases arising under the laws of the United States,' vests in the Federal Courts, exclusively, and in the Supreme Court of the United States ultimately, the authority of deciding on the constitutionality of any act or law of the Congress of the United States." This is sound and should be obvious. The statement of the Rhode Island legislature is a full and complete answer to the nullification doctrines of the resolutions. Clearly, the Supreme Court of the United States, and not the various States legislatures, is the proper authority to pass upon the constitutionality of a law of Congress. When Jefferson said there was "no common judge," in such a case he was plainly in error. There is a "common judge," the Supreme Court, otherwise there could be no Union. The legislature of New Hampshire also took this view of the case when it said, "That the State legislatures are not the proper tribunals to determine the constitutionality

of the laws of the General Government; that the duty of such decision is properly and exclusively confined to the judicial department." In addition to this, the Alien and the Sedition Acts were declared to be not only "constitutional" but "highly expedient."

These hostile replies must have been discouraging to the Virginia legislature; and in order to counteract the influence which such replies might exert if left unanswered, they were referred for consideration and report to a committee, of which Madison was the chairman, the author of the resolutions having returned to the legislature in the meantime, probably for the purpose of taking a part in their defence. Madison was apparently stirred by the opposition, as well he might be, and took the defence of the resolutions very seriously. His report comprises forty large and closely printed pages. In it he argues extensively against the doctrine of implied powers and centralization. He explained that nullification was not to be resorted to for trivial reasons, but only for long standing and flagrant abuses of the rights of the States, and not even then unless the Supreme Court had united with Congress in the perpetration of such abuses. Undoubtedly something should be done in such a case as that cited by Madison. There should be some remedy. It is clear, however, that revolution and not nullification should be resorted to in such an emergency. Madison does not appear at his best in this report. He is the advocate, rather than the statesman. His committee introduced a resolution stating that the Assembly adhered to the Resolutions "as founded in truth, as consonant with the Constitution, and as conducive to its preservation;" and that they renewed their protest against the Alien and the Sedition Acts as "palpable and alarming infractions of the Constitution." Madison's report met with opposition. It passed the House, however, by a vote of sixty to forty, and the Senate by a vote of fifteen to six.

The verdict of the people was opposed to the doctrine of the Virginia and Kentucky resolutions. Jefferson and

Madison were defeated. The principal doctrine of the resolutions reappears in the nullification contest of 1832, only to be again disavowed. Jefferson and Madison did not appreciate the full import of the doctrines that they were expounding. They trained their heavy constitutional guns upon a comparatively insignificant enemy. The evils of the Alien and the Sedition Acts were "brief and transient." They would correct themselves if allowed sufficient time. It was breaking a butterfly on a wheel to bring the "compact" and "nullification" theories to bear upon them. When, later, Calhoun and his followers made much of these resolutions, and really followed them to their logical conclusion, Madison denounced nullification and secession as "twin heresies," and declared that these doctrines were not to be found in the Virginia or the Kentucky Resolutions of 1798. The Kentucky Resolutions of 1799 were made the scapegoat, as they contained an emphatic expression of nullification. It is true that the word "nullification" does not appear in the resolutions of 1798, but the spirit of nullification is there and the word itself appears in a draft of the Kentucky resolutions found among the papers of Jefferson. It was probably eliminated by the mover of the resolutions.

It might be well to add a word concerning the authorship of these famous resolutions since this has been a matter of controversy. With regard to the authorship of the Virginia Resolutions, there has never been any question. Madison apparently never sought to deceive the public in this respect, but Jefferson was more secretive in his methods. For years John Breckenridge, the mover of the resolutions in the Kentucky legislature, was recognized as their author. They were "the brand of Cain" or a "civic crown" upon him, according to the point of view. In 1821, however, the *Richmond Examiner* said that Jefferson was the author. This announcement seems to have disturbed Mr. J. Cabell Breckenridge, the son of John Breckenridge, as it would make it appear that his father had sailed under false colors.

He accordingly wrote to Jefferson wanting to know the exact truth. Jefferson's reply of December 11, 1821, should remove all doubt in regard to the authorship. In speaking of the resolutions, Jefferson said: "I drew and delivered them to him, and in keeping their origin secret he fulfilled his pledge of honor." The descendants of Breckenridge, however, unwisely it would seem, have assailed Jefferson's explicit statement. They are still disposed to claim the honor for their distinguished ancestor. In the light of Jefferson's statement it is rather surprising to read in Mr. E. D. Warfield's book, *The Kentucky Resolutions of 1798*, the statement that "John Breckenridge was the responsible author of *The Kentucky Resolutions of 1798*." Mr. Warfield is conversant with all the facts in the case, but his definition of "responsible" is interesting and important, and even peculiar. Mr. Warfield admits that the resolutions came from the pen of Jefferson, and adds: "Mr. Breckenridge was not then, the absolute, sole author of the resolutions as a paper." It seems clear that the slight modifications which Breckenridge made in the original text of the resolutions should not be made the basis of a claim for authorship; that must go to Jefferson. Even if Breckenridge did modify the original draft "to suit his own views and the observed wants of Kentucky," Mr. Jefferson must still be considered the substantial author of the Kentucky Resolutions of 1798.

It is the misfortune of the United States that economic problems tend so readily to become political questions. We have never been able to consider, for example, matters of finance or expansion without viewing them from the standpoint of national politics. Even in the administration of John Adams, it was impossible to adjust such economic matters on their merits. When the war with France was imminent, it became evident that more revenue would be needed in case of actual hostilities. It seemed the part of wisdom then to make the necessary arrangements for an increased national revenue. A stamp tax was first resorted

to for this purpose. This tax was very similar to that against which the colonists had rebelled a generation before, and perhaps this was one of the reasons for the unpopularity of the measure. It provided that a revenue stamp should be placed on licenses, insurance policies, receipts, notes, and other papers of a legal and business character. A license to practice law carried upon its face a ten-dollar stamp, and documents of less importance had stamps varying in amount from twenty-five cents to one dollar. The tax, although identical in principle with that in force at the present time, was vigorously opposed. Prejudice rather than reason seemed to be against it. President Adams, though not strongly in favor of the measure, signed it. It does not appear that he was opposed to the principle of the stamp tax, but rather to the fact that the measure greatly increased the authority of the secretary of the treasury.

The returns from the stamp tax being found to be inadequate for the warlike preparations, a direct tax of \$2,000,000 was levied on real estate and slaves. According to a provision of the Constitution, direct taxes can be levied only in proportion to the population. This provision caused the tax to rest heavily upon the newer and poorer States, where the per capita wealth was small. If the tax were placed so low as not to be burdensome on the poorer States, the total sum raised would be comparatively insignificant. These considerations have always operated to make the direct tax almost useless as a source of revenue. Such a tax has been levied three times in our history and always with unsatisfactory results. The amount of revenue gained has been small in comparison with the effort put forth, collections have been opposed, and large sums have remained uncollected. In the present instance—the case of the direct tax of 1798—all these difficulties were encountered. The tax of \$2,000,000 was apportioned among the several States in amounts varying from \$345,489 for Virginia to \$18,806 for Tennessee. The collection of the tax was opposed in many localities and was forcibly resisted in Pennsylvania.



The usual mob gathered to oppose the officers of the law and several arrests were made. The arrested men were rescued by an assaulting party under the leadership of John Fries, an irresponsible and hare-brained auctioneer, who, glib of speech, had worked up a sentiment against the collection of the tax under the inspiration of tavern bumpers. Fries was tried and convicted of treason, but was afterward pardoned by President Adams, much to the chagrin of the Cabinet and other leading Federalists. His act of executive clemency was roundly condemned, but not justly so, as Fries was clearly not guilty of treason. The Constitution is very explicit on this point. "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." Fries had done none of these things. He had committed a very serious offence against the laws and richly deserved punishment, but that offence was not treason.

The first national bankruptcy law was passed in 1800. The Constitution provided that "Congress shall have power to establish . . . uniform laws on the subject of bankruptcies throughout the United States." The Federalist party, comprising for the most part the business and commercial interests of the country, acted under this clause in 1800; but the law was repealed by the Republicans under Jefferson.

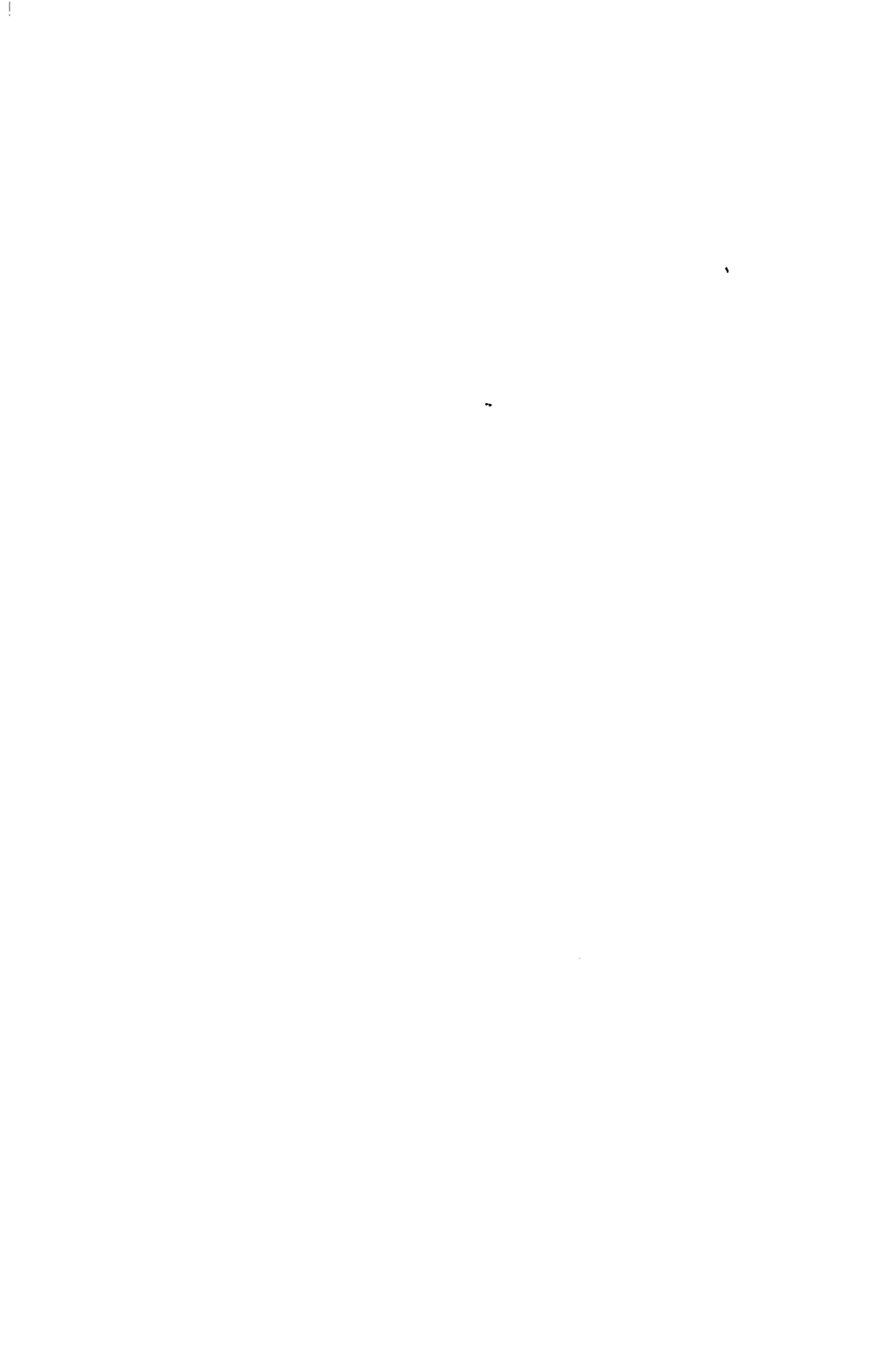
During the Adams administration the term "territory" began to be used in its present sense. Definite organizations were effected. In 1798 the Mississippi Territory, comprising practically the land now included in the States of Mississippi and Alabama, was organized; and in 1800, Indian Territory, embracing the present States of Indiana, Illinois, Michigan, and Wisconsin, was erected.

On December 14, 1799, George Washington, the strong staff upon which the nation leaned in time of stress, passed away. Since his retirement from office he had lived quietly and simply on the banks of the Potomac, but continued to be, nevertheless, the balance wheel of the nation. Although

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*Martha Washington. From the miniature by James Peale, now in possession of the Historical Society of Pennsylvania.*



his career seemed rounded out and complete, his death was a great loss to the nation and a blow to the prospects of the Federalist party. Tobias Lear, Washington's private secretary, in sending to President Adams the intelligence of the death of his chief, said: "His last scene corresponded with the whole tenor of his life; not a groan, nor a complaint escaped him in extreme distress. With perfect resignation, and in full possession of his reason, he closed his well-spent life."

The party contentions of the period came to a definite issue in the election of 1800. Adams desired a reelection. He wished the endorsement of a second term and was really entitled to it; but the Federalist party was in a most lamentable condition for an aggressive campaign. The democratic spirit was growing among the people, legislative blunders had been made, and the party was torn by internal dissensions. Hamilton and his followers were vindictive and unrelenting in their opposition to Adams, but there seemed to be no other Federalist who could replace him. Before the death of Washington, an attempt to call him from retirement, in order to defeat Adams, was seriously considered by Hamilton and others. Hamilton then made a trip through the New England States, the stronghold of Federalism, to test the temper of the people. He found that Adams was demanded everywhere as the Federalist candidate. "The leaders of the first class" were against him, but "the leaders of the second class" and the masses of the people were for him. There was cold comfort for Hamilton in all this, and he gave the candidacy of Adams a nominal and grudging support. John Adams and Charles Cotesworth Pinckney became the candidates of the Federalists, and Jefferson and Aaron Burr represented the Republicans. There were no regular nominating conventions, but two secret meetings of the members of the parties in Congress were held to determine upon the tickets. Sixteen States were to participate in the election, and the electors were chosen, for the most part, by the legislatures of the States. The legislature

of New York was elected in May of 1800, and largely as a result of Burr's political manipulations contained a Republican majority. This was a serious blow to the ambitions of the Federalist party, as the electoral vote of New York had been cast for Adams in 1796. The campaign between the two parties was conducted with much bitterness, but the dissensions in the Federalist party were even more intense.

In his opposition to Adams, Hamilton was led to do some very foolish and unpardonable things. He intrigued to secure for Pinckney more votes than for Adams in the Electoral College,—this in opposition to the wishes of the majority of the Federalists,—and wrote an unaccountable letter on *The Public Conduct and Character of John Adams, Esq., President of the United States*. While nominally supporting Adams, he wrote this letter in the course of which he criticised the President and his administration very severely and very unjustly. Hamilton as he admitted was “in a very beligerent humor.” As a matter of fact, “The volcano was full to bursting, and the pent up fury must find vent.” His friends remonstrated, but to no avail. Information for use in this letter, which covers over fifty large printed pages, was furnished by Pickering and McHenry, who had recently retired from the Cabinet, and by Wolcott who still remained in office. The letter, or pamphlet, was to be printed, and distributed “in a judicious manner,” but Burr came into possession of a copy of it, and spread it far and wide. Its preparation was undoubtedly the most foolish and impotent act of Hamilton's life, and he could not fail to see, upon its publication, that he had made a great blunder. In the course of the letter, Hamilton took occasion to remark that Adams did “not possess the talents adapted to the *administration* of government,” and that there were “great and intrinsic defects in his character, which” unfitted “him for the office of chief magistrate.” His entire public career was reviewed and found worthy of unqualified condemnation. He had favored the enlistment of troops in the Revolution for short periods, and not for the entire war as Washington

did; he would have had a new commander of the army for each year; he had been given credit for diplomatic service which of right belonged to Mr. Jay; he was "a man of an imagination sublimated and eccentric"; he had "unfortunate foibles of a vanity without bounds, and a jealousy capable of discoloring every object"; he had not displayed good judgment either in the Revolution or in Congress; his *Journal* gave evidence of vanity; he had "extreme egotism of temper"; he showed "eccentric tendencies" in the vice-presidency; his French policy was "pernicious"; he did not consult his ministers, but thought himself a Frederick; the dismissal of McHenry and Pickering was caused by his "ungovernable temper" and "paroxysms" of anger; he should have dealt with his Cabinet with a "frank politeness," not with "an uncouth austerity"; and his pardon of John Fries was for political purposes. But just here comes the most astounding part of the letter. In the concluding lines, Hamilton remarks: "This statement, which has been made, shows that Mr. Adams has committed some positive and serious errors of administration; that in addition to these, he has certain fixed points of character which tend naturally to the detriment of any cause of which he is the chief, of any administration of which he is the head; that by his ill humors and jealousies he has already divided and distracted the supporters of the government; that he has furnished deadly weapons to its enemies by unfounded accusations, and has weakened the force of its friends by decrying some of the most influential of them to the utmost of his power; and let it be added, as the necessary effect of such conduct, that he has made great progress in undermining the ground which was gained for the government by his predecessor, and that there is real cause to apprehend it might totter, if not fall, under his further auspices. . . ." Then comes the stultifying sentence, "Yet with this opinion of Mr. Adams, I have finally resolved not to advise the withholding from him a single vote." His advice to his brother Federalists then may be expressed in this way: The

government is quite likely to totter and fall should Adams be reëlected, but I do not advise you to vote against him, nevertheless. It was the expressed wish of Hamilton that the circulation of the letter should "forever be confined within narrow limits," but he did not consult Burr beforehand and the document was given the widest publicity, greatly to the discomfiture of the Federalists.

The result of the election is soon told. Jefferson and Burr each received seventy-three votes; Adams, sixty-five; C. C. Pinckney, sixty-four; and John Jay, one. There was no choice and the election of the president, for the first time, was thrown into the House of Representatives. The Federalists in Congress made an alliance with Burr to elect him president over Jefferson, contrary to the wishes of the Republican party. Be it said to the credit of Hamilton, however, that, much as he disliked Jefferson, he frowned on the scheme to make Burr president. "To my mind," he said, "a true estimate of Mr. Jefferson's character warrants the expectation of a temporizing rather than of a violent system." The balloting began on the 11th of February, and closed on the 17th. The first thirty-five ballots showed eight States for Jefferson, and six for Burr, with Vermont and Maryland divided. The thirty-sixth ballot gave ten votes to Jefferson and four to Burr, Delaware and South Carolina casting blanks. Burr was chosen vice-president. The Federalists had failed and largely, it must be confessed, because of the intrigues and the pettiness of Hamilton. His entire course in the election of 1800, except his opposition to Burr, is open to censure. He made a proposition to John Jay, the Governor of New York, which discloses the politician rather than the statesman. New York had elected, early in 1800, a Republican legislature, which was expected in turn to choose Republican presidential electors. The Federalist legislature, however, had still some weeks of official existence, and Hamilton proposed to Governor Jay that a special session of the outgoing legislature be called to provide for the election of electors by electoral districts.

The upright governor thrust the communication into a pigeon hole after writing upon the back of it: "Proposing a measure for party purposes, which I think it would not become me to adopt." This was the end of Hamilton's scheme to deprive the Republicans of the fruits of their victory.

This, then, was practically the close of the active existence of the once great Federalist party. It never recovered from its defeat in 1800. In 1804 its candidate obtained only fourteen electoral votes. The reasons for this downfall have been previously referred to, and need be only summarized at this point: the jealousy of Adams and Hamilton; certain unpopular and ill-advised pieces of legislation, such as the Naturalization Act, the Alien and the Sedition Acts, the acts for the increase of the army and navy; the taxing measures, and the Judiciary Act of 1801; the French mission, and the sedition prosecutions,—these all contributed to the Federalist downfall. The shrewdness of Jefferson as a party leader, the influence of Burr in New York, and the bluntness and lack of tact on the part of Adams, tended in the same direction. More important, however, than any other single cause is the fact that the democratic spirit among the masses of the people was increasing. There was a tendency in the Federalist party to neglect the "plain people." The "well-born" were unduly exalted. In the light of this fact, the change to Republicanism had its advantages. It is fortunate, however, that the change did not come sooner than it did. It is fortunate that the Federalist party was allowed to continue in power for three administrations, and give the country the advantages of a strong central government. The student of American history has every reason to feel grateful for the work done by the Federalist party, and must experience a feeling of regret at the downfall of that party, although its passing was not in every respect untimely. The government needed a "bath of the people" in 1800.

A few of the closing events of the Adams administration yet remain to be noticed. On January 31, 1800,



President Adams appointed John Marshall, Chief Justice of the Supreme Court. Probably a more fortunate appointment, judged by its results, was never made. The interpretation of the Constitution was not less important and was more difficult than its drafting. For thirty-four years Mr. Justice Marshall expounded the Constitution and his memorable work put nationality upon a solid basis. Some of the other acts of Adams at this time are not so praiseworthy. The Judiciary Act of 1801, provided for a number of judges far in excess of the needs of the country. The Federalists took advantage of their brief lease of life to provide comfortable offices for themselves. The appointments under the act were made, of course, by Adams, and he remained at the capitol at this and other business until a late hour on the night of the 3d of March, 1801. Many of these "midnight appointments" were legislated out of office during the period of Republican control. After completing his work only a few hours before the inauguration of Jefferson, Adams slunk out of Washington without bringing his greetings to his successor in office. This, of course, was an unpardonable discourtesy. Some writers have attempted to defend, to explain, to palliate, or to justify the conduct of Adams, but without much success. John T. Morse is entirely correct when he says of this rudeness: "It was the worst possible manifestation of all those petty faults which formed such vexatious blemishes in Adams's singularly compounded character." Adams went into his forced retirement at Quincy, Massachusetts, and lived on for a quarter of a century. In 1825, he had the pleasure of seeing his greater son, John Quincy Adams, elevated to the chief magistracy; but, on the whole, his declining years were full of stubborn resentment. He wrote some ill-advised letters during his retirement which do not represent him at his best. His views on political matters remained for the most part unchanged, and his loyalty to the French missions never faltered. In January, 1815, in the course of a long letter to James Lloyd, he said: "I wish not to fatigue you with too

long a letter at once; but, Sir, I will defend my missions to France, as long as I have an eye to direct my hand, or a finger to hold my pen. They were the most disinterested and meritorious actions of my life. I reflect upon them with so much satisfaction, that I desire no other inscription over my gravestone than: 'Here lies John Adams, who took upon himself the responsibility of the peace with France in the year 1800.' " In another letter to Mr. Lloyd, dated February 6, 1815, Mr. Adams expresses himself to the same effect when he says: "My 'missions to France,' which you call the 'great shade in my Presidential escutcheon,' I esteem the most splendid diamond in my crown; or, if any one thinks this expression too monarchical, I will say the most brilliant feather in my cap."

John Adams died on the evening of July 4, 1826, at the age of ninety-one. His last words were: "Thomas Jefferson still survives." He did not know that Jefferson had died a few hours before. Adams was one of the strong, sturdy characters of our early national history. He was more sinned against than sinning.



## CHAPTER XVI

### *ECONOMIC AND SOCIAL CONDITIONS AT THE CLOSE OF THE CENTURY*

THE economic and social conditions in the United States at the close of the eighteenth century do not furnish materials for an inspiring chapter. The people were conservative to a fault. Changes were looked upon as evils to be abhorred. Said Jedidiah Morse: "Let us guard against the insidious encroachments of *innovation*, that evil and beguiling spirit which is now stalking to and fro through the earth, seeking whom he may devour." Morse sounded the keynote of the times. To be progressive was to be a fanatic; to advocate changes in the old order of things, was a sure symptom of lunacy. He who would be respectable must be conservative. An examination of the economic and social conditions in 1800 will confirm these statements. In a material way there was little aggressiveness or enterprise. Those very qualities which are now most characteristic of Americans were then conspicuously lacking.

The census of 1800 showed a substantial increase in population. There were five million three hundred and eight thousand four hundred and eighty-three people, of whom nearly twenty per cent were slaves, in the United States in 1800, as against three million nine hundred and twenty-nine thousand two hundred and fourteen in 1790. Virginia still remained the most populous State, with eight hundred and eighty thousand two hundred inhabitants; Pennsylvania, New York, North Carolina, and Massachusetts

followed in the order named. Delaware had sixty-four thousand two hundred and seventy-three inhabitants and the District of Columbia fourteen thousand. These five millions of people were scattered over about three hundred thousand square miles of territory, and about three and one-half millions of them were easily accessible to tidewater. Kentucky and Tennessee, at the time, constituted the "far West"—that district which seemed to many to be the beginning of a new republic with its face toward the Mississippi and the West, rather than the Atlantic and the East. The West, however, was being settled quite rapidly. In 1790, there were one hundred and ten thousand inhabitants, and in 1800, three hundred and seventy thousand. The centre of population had left the coast and begun its westward march. In 1790, it was twenty-three miles east of Baltimore, and in 1800, it was eighteen miles west of that city. Some few settlements had been made in the Ohio territory. There were about forty-five thousand people there scattered in settlements at Marietta, Cincinnati, Chillicothe, and other points, including a few tents where Cleveland now stands. The distance between the East and West seemed almost insuperable, as there were no points of direct contact.

There were, in round numbers, about a million slaves in the United States in 1800. About nine hundred thousand of these were south of Mason and Dixon's line. In point of white population, the North outnumbered the South about two to one.

The population was very largely rural, only about five per cent of the people living in the cities. In fact, the cities were few in number. Philadelphia, New York, Baltimore, Boston, and Charleston, with populations ranging from seventy thousand to twenty thousand were the five largest cities, in the order named. Philadelphia surpassed all other American cities, not only in population, but in education, culture, and municipal improvements. It was the custom, in 1800, to compare Philadelphia with the capitals of the

Old World. The city was about as large as Liverpool, was partially drained and paved, and some provisions were made for lighting and policing. Water was supplied to the citizens by means of a system of wooden pipes, and the city jail is said to have been a "model" one, although the prisoners soon perished from confinement in it.

Washington was a city only in name. The capitol was there, to be sure; but it was hardly finished in 1800. He in whose honor the city was named did not live to see the transfer of the seat of government to the new capital. This was not accomplished until late in the Adams administration, for on the 17th of November, 1800, Congress assembled in the city of Washington for the first time. The city was beautifully located, and laid out on a magnificent scale, but it comprised only a few unfinished buildings in the midst of the wilderness. There were two department buildings and the yet incomplete presidential mansion, later known as the "White House"; but the dwellings there were few and insignificant. It is little wonder that the people of Alexandria were disposed to mock at the new city, even though it bore the name of Washington. The contrast between the conveniences and the refinement of Philadelphia and the crudeness of Washington must have been striking. Mrs. Adams, writing on the 21st of November, 1800, noted the prevalence of the forests and complained of the scarcity of wood for fuel. She spoke, too, of the many inconveniences which she was compelled to endure because of the unfinished condition of the buildings. In one instance, however, there was a temporary convenience. The unfinished "audience room" was used as a drying room for clothes. The New England people, Mrs. Adams remarked, would have had everything in readiness on time.

The total area of the United States in 1800 was eight hundred and forty-nine thousand one hundred and forty-five square miles, of which about one third was inhabited to some extent. The estimated wealth at the time was about

\$1,800,000,000 or a per capita wealth of \$339, including the slaves.

The institutions and traditions were British, but a large proportion of the people in 1800 was not of British origin. In New England and Virginia, the majority were of British descent, but Dutch in large numbers were found in New York, Germans in New York and Pennsylvania, and French, Spaniards, Scotch, and Scotch-Irish in the far South.

The future of the million blacks in the United States in 1800 was not a bright one. The situation was not so hopeful as in 1790. At the beginning of the national period, good progress was being made looking to the gradual emancipation of the slaves. In 1800, New Jersey was the only northern State that had not made some provision for emancipation, and it did so in 1804. Similar efforts were being made in a small way by the abolition societies of the South. The invention of the cotton-gin, however, in 1793, checked the efforts of the emancipators. By it cotton culture was stimulated, and made immensely more profitable than formerly. Slave labor seemed indispensable, and the institution was fastened upon our national organism until removed by force in the Civil War.

The indented servants, or redemptioners, became virtually slaves for a term of years. They engaged to work for someone for a period of three to eight years for their passage to the United States. The laws of the States governing this class of people were strict and specific. The laws of Pennsylvania were particularly so. In addition to the passage, "meat, drink, apparel, and lodging, with other necessities, during said term," and the "usual allowance" at the end of the term of service, were provided for in the contract. The labor of the redemptioner was sold. The usual price was £20 1s. 6d., regardless of sex, or term of service. Children brought from £8 to £10, and were to receive a limited amount of education. No redemptioner could be sold outside of Pennsylvania,—the State in which the largest number of this class were to be found,—without his consent

and the consent of two justices of the peace. In Pennsylvania the redemptioner received, at the end of his service, two hoes, an axe, and two suits of clothes. In case he lost a day from service, without the permission of his master, five days were added to his term, and if he married during the time, he was condemned to serve for an additional year. The law was strict in respect to fugitives from service. Any person who harbored a fugitive, and did not report his whereabouts to the authorities, was fined, and a reward, sometimes amounting to £1 was offered for the apprehension of the fugitive. It was unlawful to transact any business with the redemptioner without the consent of the master. It is perhaps needless to say that the system led to many cruelties. Masters in many cases were intent only on getting as much revenue as possible from the labor of their servants. They were not particular either, in many cases, in regard to the kind of employment which was offered. In one instance, a ship captain appeared at Philadelphia during an epidemic of yellow fever, and offered his shipload of redemptioners as nurses. In the selling of the labor, family ties were often disregarded and families separated.

The occupations of the people were simple and primitive. Agriculture was the most important industry, especially in the South. Manufacturing was in its infancy, but commerce was extensive and profitable. In 1800, about one million two hundred thousand barrels of flour and two million bushels of wheat were exported. In the South, tobacco, rice, and indigo were important exports, and cotton, owing to the invention of the cotton-gin, was rapidly coming into prominence. Statistics for this period are incomplete and not wholly reliable, but the value of the exports and imports, respectively, for 1800, was not far short of \$70,000,000 and \$90,000,000. In 1790 the exports had been valued at about \$20,000,000, and the imports at \$25,000,000. The great captains of industry and masters of transportation had not appeared in 1800. John Jacob Astor was a fur



merchant of modest pretensions, living where the Astor House later stood; and Cornelius Vanderbilt was a lad of six, imbibing transportation ideas from his father's little ferryboat at Staten Island.

No great progress was possible in an industrial or commercial way without the use of steam power. No considerable use had yet been made of Watt's invention. There are said to have been five steam engines in the United States in 1803. John Fitch had been unable to secure funds enough to apply steam power to navigation in a practical way. This was not effected until done by Fulton in 1806. The prejudice against such inventions in 1800 was remarkable, and the ignorance of the leaders of thought was equalled only by that of the famous Council of Salamanca which passed upon the projects of Columbus. In May, 1803, Benjamin H. Latrobe, the leading engineer in the United States, made a report to the American Philosophical Society, at Philadelphia, in which he said: "During the general lassitude of mechanical exertion which succeeded the American Revolution; the utility of steam-engines appears to have been forgotten; but the subject afterward started into very general notice in a form in which it could not possibly be attended with much success. A sort of mania began to prevail, which indeed has not yet entirely subsided, for impelling boats by steam-engines . . . For a short time a passage boat, rowed by a steam-engine, was established between Bordentown and Philadelphia, but it was soon laid aside." Here, then, comes the most remarkable part of the report. "There are indeed general objections to the use of the steam-engine for impelling boats," Mr. Latrobe continues, "from which no particular mode of application can be free. These are, first, the weight of the engine and of the fuel; second, the large space it occupies; third, the tendency of its action to rock the vessel and render it leaky; fourth, the expense of maintenance; fifth, the irregularity of its motion and the motion of the water in the boiler and cistern, and of the fuel vessel in

rough water; sixth, the difficulty arising from the liability of the paddles or oars to break if light, and from the weight, if made strong. Nor have I ever heard of an instance, verified by other testimony than that of the inventor, of a speedy and agreeable voyage having been performed in a steam boat of any construction. I am well aware that there are still many very respectable and ingenious men who consider the application of the steam-engine to the purpose of navigation as highly important and as very practicable, especially in the rapid waters of the Mississippi, and who would feel themselves almost offended at the expression of an opposite opinion. And perhaps some of the objections against it may be obviated. That founded on the expense and weight of the fuel may not for some years exist in the Mississippi, where there is an abundance of wood on the banks; but the cutting and loading will be almost as great an evil." While the above opinion was prevalent, river navigation could not be developed, and the mineral resources of the country could not be touched. It is needless to remark that this state of things did not long exist. In a few years the practicability of steam power as applied to navigation had been demonstrated, and Mr. Latrobe was entirely converted. But even Fulton's experience was not a happy one. "When I was building my first steamboat at New York," he said, "the project was viewed by the public either with indifference or with contempt as a visionary scheme. My friends were indeed civil, but they were shy . . . As I had occasion to pass daily to and from the building-yard while my boat was in progress, I have often loitered unknown near the little group of strangers gathering in little circles, and heard various inquiries as to the object of this new vehicle. The language was uniformly that of scorn, or sneer, or ridicule. The loud laugh often rose at my expense; the dry jest; the wise calculation of losses and expenditures; the dull but endless repetition of the Fulton Folly. Never did a single encouraging remark, a bright hope, or a warm wish cross my path." It may be that the inventor was

pessimistic in regard to the matter, but it is certainly true that genius of all kinds was much oppressed in 1800.

Transportation facilities had not improved much since the period of the confederation. Road making had not yet been learned. There were a few fairly good specimens of turnpike road in the United States, but only a few. The Lancaster pike, extending from Philadelphia to Lancaster, was probably the best piece of road in the United States. It was built in 1792 by a company organized for the purpose and authorized to recoup itself by collecting toll. The method of making this road was ridiculous. After the trees were cut away the open space was covered with huge boulders, and when the chinks between the boulders were filled in with dirt and gravel, the work was complete. It required only one heavy rain to reveal the imperfections of the method. The dirt was soon washed away and the horses stumbled along over and among the boulders and were woefully bruised and beaten. An Englishman who was familiar with the MacAdam method finally took the matter in hand "and the road became the first turnpike in the United States." In the construction of this road that conservatism and prejudice which Fitch, Fulton, and Rumsey had to encounter was evident. The utility of such a turnpike should have been obvious, and its builders should have been looked upon as public benefactors. It was not so, however. The proposition to charter a company with power to condemn land and charge toll was met with a protest. An indignation meeting was held. Selfishness was evident, and public spirit absent. Resolutions condemning all such corporations and bristling with excerpts from Blackstone and the laws of Edward III. were passed. The promoters of the road became angry and submitted a reply to the resolutions. The reply was not dignified or courteous. It reviled the chairman of the protesting meeting, and declared the learned citations to be of no value because they consisted of detached sentences taken from various places and pieced together. Anything might be





Three views of the life-mask of Washington. From the original in possession of the Historical Society of Pennsylvania.

proved in this way. The Bible says: "Judas went and hanged himself"; and in another place: "Go thou and do likewise." The chairman of the indignation meeting was advised to couple the citations and follow the advice. However, the company was chartered and the road built, and was a great boon to the adjacent land owners.

Travelling was difficult, tedious, and expensive. The trips were infrequent and slow. There was a stage once a week from New York to Philadelphia, making the trip in about two days. The stage went from Boston to New York three times per week, and made the trip in three days. In the South the roads were few and bad, and people travelled on horseback for the most part. A coach running from Charleston to Savannah was the only one south of the Potomac River. Jefferson found the trip from Washington to his home at Monticello a difficult one. He remarks that there are eight rivers on the route and "five have neither bridges nor boats." In the North, the coach did not make more than four miles an hour on an average; in the South the speed was less. The average expense in the North was about six cents per mile exclusive of charges at the inns. Including inn charges, the cost was about ten cents per mile. Francis Baily, who travelled extensively in the United States at this time, made a trip of two hundred miles for \$21.

The progress of the mails was directly dependent upon transportation facilities and may be inferred from what has been said. There were about twenty thousand miles of post road and nine hundred offices. The receipts for the year ending October 1, 1801, were only \$320,000, of which Philadelphia contributed \$55,000. The mails moved very slowly on the seaboard, and still more so in the interior. The trip from Philadelphia to Nashville, Tennessee, occupied twenty-two days.

Foreigners travelling in the United States have recorded some interesting descriptions of the methods of transportation. Robert Sutcliffe, an Englishman, who travelled in

this country in 1804-1806, says, in speaking of his experience in the South: "We sometimes met a ragged black boy or girl driving a team consisting of a lean cow and mule; sometimes a lean bull or an ox and a mule; and I have seen a mule, a bull, and a cow, each miserable in its appearance, composing one team, with a half-naked black slave or two riding or driving, as occasion suited." Again he records the fact that he met elegant coaches with footmen gayly dressed.

The condition of manufactures in the United States in 1800 is well indicated by Hamilton's famous report to Congress of December 5, 1791, for in the last decade of the eighteenth century the annual manufacturing output made little appreciable increase. After speaking of the satisfactory progress made, Hamilton enumerates some of the "most considerable" as follows:

"1. *Of Skins.*—Tanned and towed leather, dressed skins, shoes, boots and slippers, harness and saddlery of all kinds, portmanteaux and trunks, leather breeches, gloves, muffs, and tippets, parchment and glue.

"2. *Of Iron.*—Bar and sheet iron, steel, nail rods and nails, implements of husbandry, stoves, pots, and other household utensils, the steel and iron work of carriages, and for shipbuilding, anchors, scale beams and weights, and various tools of artificers, arms of different kinds; though the manufacture of these last has of late diminished for want of demand.

"3. *Of Wood.* Ships, cabinet wares, and turnery, wool and cotton cards, and other machinery for manufactures and husbandry, mathematical instruments, coopers' wares of every kind.

"4. *Of Flax and Hemp.*—Cables, sail cloth, cordage, twine, and pack thread.

"5. Bricks and coarse tiles, and potters' wares.

"6. Ardent spirits and malt liquors.

"7. Writing and printing paper, sheathing and wrapping paper, paste boards, fullers' or press papers, paper hangings.

"8. Hats of fur and wool, and of mixtures of both; women's stuff and silk shoes.

"9. Refined sugars.

"10. Oils of animals and seeds, soap, spermaceti and tallow candles.

"11. Copper and brass wares, particularly utensils for distilleries, sugar refineries, and breweries; andirons and other articles of household use, philosophical apparatus.

"12. Tin wares for most purposes of ordinary use.

"13. Carriages of all kinds.

"14. Snuff, chewing and smoking tobacco.

"15. Starch and hair powder.

"16. Lampblack, and other painters' colors.

"17. Gunpowder.

"Besides manufactories of these articles, which are carried on as regular trades, and have attained to a considerable degree of maturity, there is a vast scene of household manufacturing, which contributes more largely to the supply of the community than can be imagined, without having made it an object of particular inquiry. This observation is the pleasing result of the investigation to which the subject of this report has led, and is applicable as well to the Southern as to the Middle and Northern States. Great quantities of coarse cloths, coatings, serges, and flannels, linsey woolseys, hosiery of wool, cotton, and thread, coarse fustians, jeans, and muslins, checked and striped cotton and linen goods, bed ticks, coverlets and counterpanes, tow linens, coarse shirtings, sheetings, toweling, and table linen, and various mixtures of wool and cotton, and of cotton and flax, are made in the household way, and, in many instances, to an extent not only sufficient for the supply of the families in which they are made, but for sale, and, even, in some cases, for exportation. It is computed in a number of districts that two-thirds, three-fourths, and even four-fifths of all the clothing of the inhabitants, are made by themselves. The importance of so great a progress as appears to have been made in family manufactures, within a few years, both



in a moral and political view, renders the fact highly interesting . . .” Although this progress in manufacturing seemed to Hamilton to be, and was, in fact, considerable, it was insignificant in comparison with that which was destined to take place in the industrial revolution of the next few decades, when steam power was applied to the industries and to transportation. No great progress was made, however, between the presentation of Hamilton’s report and 1800.

The most significant advance in the early history of the factory system was made in the manufacture of cotton. Before the invention of the cotton gin by Eli Whitney in 1793, cotton culture and manufacture in the United States were comparatively insignificant. The separation of the seed from the fibre was effected by hand, and was an exceedingly slow and expensive process. In 1785–1786 the whole amount of cotton that arrived at Liverpool from America was less than one hundred and twenty bags. In 1790, it is estimated that the South produced two hundred thousand pounds of cotton, and the exportation of cotton in 1791 amounted to one hundred and eighty-nine thousand pounds. After the invention of the cotton gin, whereby one man could do the work of three hundred, the amount of cotton exported increased rapidly. In 1800 it was twenty million pounds, and in 1824 it reached one hundred and forty-two million pounds, and was constantly increasing. The invention brought untold wealth and great material prosperity to the South. “The debts of the South were paid off by its aid, its capital was increased, and its lands trebled in value.” From a material standpoint the invention of the cotton gin is the most important single event in the economic history of the South; but the reverse side of the shield is not so pleasing in appearance. The invention gave slavery a new lease of life. It was now immensely profitable—even indispensable, and became an economic rather than a moral question.

Eli Whitney, the inventor, was born in Massachusetts in 1765, and was graduated from Yale College in 1792.

Shortly after his graduation he went to Georgia to teach school, and there came in contact with the cotton problem. He heard many complaints of the slowness of the work. The separating of the seed from the fibre was done largely in the evening by women, children, and slaves. Whitney was a man of most remarkable mechanical ingenuity, and immediately set about to devise a more rapid method of doing the work, although he said that he had never seen a cotton seed before coming to Georgia. He had to make all his own tools, and draw his own wire, as none of these things could be purchased even in Savannah. The success of his machine was assured in 1793. The fundamental principle of it was exceedingly simple. By means of a series of saw teeth the fibre of the cotton was drawn through openings too small to allow the seeds to pass through. In this way the separation was effected with great rapidity. It is estimated by Hubert in his *Inventors* that the separation of a pound of cotton fibre from the seed was a day's work for a woman, but that a man, with the aid of Whitney's machine even in its first rude form, and two horse power, could clean five thousand pounds in the same time. Whitney's future seemed bright. He and his friend Miller, formed a partnership for the manufacture and sale of the machines, but their experience was discouraging in the extreme. News of the great invention had been noised about and the people became so curious and so avaricious that they broke into Whitney's shop and appropriated his machine before he could secure his patent. The result was that several machines, modelled after Whitney's, were in successful operation before the patent was procured. The destruction by fire of his shop, machines, and papers in New Haven added to his embarrassment. In 1796 there were thirty gins in the State of Georgia, worked by horses, oxen, and water. Very little attention was paid to Whitney's claims, and his expenses incurred in attempts to protect his invention from encroachments, were enormous. Public sentiment was avaricious and opposed to his interests.

In the first case that he brought for encroachment, the verdict of the jury was decisively against him. He then obtained some returns by selling to North Carolina, South Carolina, and Tennessee the right to manufacture and use his machine in those States. But endless suits to defend his patent exhausted his resources. Finally, in 1807, when his patent had nearly expired, and when he had brought at least sixty suits, a United States Court in Georgia found in his favor. Failing to obtain lucrative returns from his invention, he entered with success into the manufacture of arms for the government. In 1812, he applied for a renewal of the patent on the ground that he had had as yet no substantial returns from it. In his application he stated that the machine did the work of one thousand men, and that his entire compensation would not equal the amount saved by his machines in one hour. The application was denied. The cotton States were opposed to it.

In studying the intellectual and social conditions, there is great diversity to be found in the various localities. New England had a strong intellectual bias but was repressed by ecclesiastical tyranny. New York had no such oppressive hierarchy, but was dominated, in political matters especially, by its great families, such as the Jays, the Schuylers, the Clintons, the Burrs, and the Livingstons. In Pennsylvania there was a domination of neither kind. "From the suburbs of Philadelphia to the banks of the Ohio," said Gallatin, "I do not know a single family that has any extensive influence." In the South the planter was supreme. From the standpoint of power and influence his position was not unlike that of the feudal lord of the Middle Ages. There was almost no city life. In Virginia the leading men were the planters and the lawyers. Life showed two extremes—the genteel and courtly living of the upper class, and the brutal existence of the lower. In 1799, William Ellery Channing compared "the selfish prudence of a Yankee with the generous confidence of the Virginian." Bryant also at a later time said that the Virginians excelled the

New Englanders in refinement of manners. A French observer said that the Virginians' "taste for reading" was "commoner then among men of the first class than in any other part of America; but" that "the populace" was "perhaps more ignorant there than elsewhere." Law and politics were made prominent in the South and Channing noted the fact that that section excelled in oratory.

The status of education in 1800 was not encouraging. New York and Rhode Island had provided for public instruction, but the systems were being allowed to decline. Noah Webster claimed that there was some familiarity in the United States in 1800 with theology, law, and politics, "but as to classical learning," he continues, "history (civil and ecclesiastical), mathematics, astronomy, chemistry, botany, and natural history, excepting here and there a rare instance of a man who is eminent in some one of these branches, we may be said to have no learning at all, or a mere smattering." Again he says: "Our learning is superficial to a shameful degree, . . . our colleges are disgracefully destitute of books and philosophical apparatus, . . . and I am ashamed to own that scarcely a branch of science can be fully investigated in America for want of books, especially original works. . . . As to libraries, we have no such things. There are not more than three or four tolerable libraries in America, and these are extremely imperfect." Such were the opinions of a close but somewhat critical observer. Boston, New Haven, and Philadelphia were literary centres, to some extent, but even in New England the common schools, academies, and colleges were declining. The graduating classes from Harvard were smaller than a generation before, and the instruction was antiquated. In 1800 the faculty consisted of the president, the professor of theology, the professor of mathematics, the professor of Hebrew, and four tutors. There had been little expansion in three-fourths of a century. Weld, an English traveller, found Princeton College in much the same stage and condition. "The number

of students," he says, "amounts to upwards of seventy; from their appearance, however, and the course of studies they seem to be engaged in, like all other American colleges I ever saw, it better deserves the title of a grammar-school than a college. The library which we were shown is most wretched, consisting for the most part of old theological books not even arranged with any regularity. An orrery contrived by Mr. Rittenhouse stands at one end of the apartment, but it is quite out of repair, as well as a few detached parts of a philosophical apparatus enclosed in the same glass-case. At the opposite end of the room are two small cupboards which are shown as the museum. These contain a couple of small stuffed alligators and a few singular fishes in a miserable state of preservation, from their being repeatedly tossed about."

Literature could not be expected to flourish in the midst of these conditions. Professor Wendell remarks, after a review of the period: "The literature produced in this country between the outbreak of the American Revolution and the close of the eighteenth century, may fairly be typified, if not precisely summarized, by what we have glanced at,—the writings of these orators and public men who reached their highest expression in the 'Federalist,' the conscious and imitative effort of the Hartford Wits, and the sporadic poetry of Philip Freneau." Some creditable beginnings of a literature, however, had been made. This was especially true in the case of political literature—if, indeed, such writings may be classed as literature at all. Thomas Paine's *Rights of Man*, aggressive, but shallow, had appeared in reply to Burke in 1791–1792. His *Age of Reason*, lucid, flippant, and racy, which was more extensively read than its merit would seem to warrant, appeared a few years later. Benjamin Franklin was well and favorably known as an editor, scientist, and statesman. His productions were widely read. Samuel Adams, the "chief incendiary" of the Revolution, had written numerous political articles for the Boston papers over such signatures as

"Vindex," "Valerius," and "A Son of Liberty." Jefferson, Hamilton, Madison, and Jay were known as authors of important state papers and political documents of various kinds. Fisher Ames, Patrick Henry, and John Randolph, of Roanoke, represented the oratory of the period. The last mentioned was eccentric and picturesque, but at times almost insane. He was, nevertheless, dramatic and even strikingly brilliant and effective on occasions. "Had he been an Italian he would have passed for one possessed of the evil eye, one who brought destruction on all he loved, and every peasant would have secretly made the sign of the cross on meeting him." He occupies a distinctive position in the political history of the United States. He snatched the banner of States Rights from the hand of Henry and passed it on to John C. Calhoun. He fought well and valiantly at times. He had an abundance of flamboyant and vituperative rhetoric, but a great and lasting reputation can never be built up on sarcasm, vilification, and violent personal abuse. His oratory "bit like an acid," but failed to convince.

Theology, too, had staunch representatives. Samuel Hopkins (1721-1813), writer and philanthropist; Nathaniel Emmons (1745-1840), the celebrated expounder and "doctrinal preacher"; and Timothy Dwight (1752-1817), the president of Yale College were the famous "triumvirate of later Calvinists." President Dwight was the most celebrated and brilliant of the three. He was the especial champion of orthodoxy as against unitarianism. He was known as a reviewer, an essayist, and a writer of travel and poetry. He was president of Yale from 1795 to his death in 1817. He and his brother, Theodore Dwight, and Joel Barlow helped to make New Haven one of the literary centres of the United States.

John Marshall wrote his substantial life of Washington shortly after 1800, and Robert Treat Paine (1773-1811) contributed criticisms, orations, and poems. Philip Freneau's poetry, although classified as "occasional," possesses

merit in some instances, and Charles Brockden Brown (1771-1810) has the distinction of being "the first American who adopted letters as his sole profession." He extended his efforts to romance, poetry, history, geography, and editorial composition. Many other names, equally famous perhaps, might be added to this list, yet it must be admitted that American literature in 1800 was not remarkable either in quantity or quality. The golden age was to begin about fifteen years later. Irving, Cooper, and Bryant were preparing to usher in the epoch.

In art there was not much being done that was distinctively and wholly American. There are, it is true, some great names connected with this period,—such as those of Stuart, West, Allston, Copley, and Malbone,—but the productive periods of these men's lives belong to England rather than to America. They were trained in England and did their work there, and this was really a matter of necessity rather than choice. The atmosphere of a new country is not congenial to art. There is neither the wealth to assure its patronage, nor the leisure and artistic education to warrant its appreciation.

In religious matters there was much laxity. In New England there was a protest against the absolutism of Puritanism, and the South was never over punctilious in matters pertaining to the church. In New England in 1800, the sway of the tithing man was less absolute than formerly. It had been the custom for the freemen of each township to meet once a year and elect tithing men. These tithing men were the custodians of the Sabbath. It was their duty to see that the Sunday laws were properly enforced—that the taverns were closed, that no work was being done, and that no undue or unseemly levity was indulged in. The tithing man had formerly been an unyielding moral and religious censor, but now, since the Revolution, his authority was questioned, and his prestige was lessened.

The camp meeting, a more emotional and plebeian kind of worship, sprang into being about 1800. The exhorting

was fierce, incoherent, and often senseless. The "falling exercises" of those spiritually wounded was sensational in the extreme. In many instances the number of those who fell in this way was so great that they were removed to some convenient place in the vicinity and, arranged in rows, were left to recover consciousness.

The moral plane was not high. Drinking, roystering, profanity, obscene conversation, and fighting were too often indulged in in the taverns of the times. The drinking places, then as now, were the centres of iniquity. Rough-and-tumble fights and other brutal contests were not only tolerated, but applauded. The advance in the moral condition of all but the very lowest stratum of society has been remarkable in the last hundred years. Practices that would not now be tolerated, were then taken as a matter of course.

The life of the people was coarse and vulgar, but for the most part simple and frugal as well. There was little of the lavish display of wealth now so common. There were no gigantic fortunes; \$100,000 was considered an immense wealth for an individual, and Pastor Abijah Weld is said to have "brought up eleven children besides keeping a hospitable house and maintaining charity to the poor" on a salary of \$220 per year. The simplicity of the life of 1800 is also shown by the postal statistics. The lowest rate of postage was eight cents, and the average could not have been less than ten. At this average rate, Henry Adams estimates that the annual income of the office—\$320,000—would provide, on an average, one letter per year for every adult inhabitant of America.

The picture presented by the economic and social conditions in the United States in 1800 is gloomy enough, but as we look back upon it after the lapse of a century, it is evident that a great awakening was imminent at that time. "The Revolution of 1800" is no myth. The opening of the new century marks the beginning of a new era in the industrial and intellectual development of the United States. The period of sluggishness and stagnation preceding it was



a period of preparation and germination. It bears the same relation to the first third of the nineteenth century that the dark ages do to the Renaissance. The changes which were effected in the life of the American people in the course of a generation were little less than marvellous.

## CHAPTER XVII

### THE BEGINNING OF REPUBLICAN RULE

THE transfer of the governmental authority from the Federalists to the Republicans in 1801, marks an important epoch in the history of national administration. The triumph of the Republican party and the inauguration of Jefferson were hailed with a popular enthusiasm never before witnessed in the United States, and never exceeded on any similar subsequent occasion except upon the victory of Andrew Jackson in 1828. Bells and guns of every imaginable sort were pressed into service to express the Republican joy, and a Federal paper in Philadelphia facetiously remarked that whiskey had gone up fifty per cent in price since the election. The *Aurora* declared that the Revolution of 1776 was complete, and the denizens of the Hartford frogpond are said to have croaked in unison for "the man of the people, the man of the people." On the day of the inauguration the bells were again in a ceaseless swing, cannons were again and again discharged, no work was done, and business was quite generally suspended. And why not? said the Republicans. Had not the despicable "monocrats" been overthrown, and were not the people entering upon their inheritance? The Federalists were correspondingly depressed and Republican wit was lavished at their expense. The Federalists, however, took hope from some of the features of the situation. The outlook was not altogether gloomy. They consoled themselves with

with a red underwaistcoat lapped over it, green velveteen breeches with pearl buttons, yarn stockings, and slippers down at the heels,—his appearance being very much like that of a tall, large-boned farmer.”

The inauguration was not an impressive spectacle. Jefferson was the first president to be inaugurated at the new capital and the ceremonies were simple both from necessity and choice. Washington was not Philadelphia, and Republican simplicity could not tolerate useless display. John Davis, an Englishman, who said that he was present at the inauguration (but he was not) tells us that Jefferson rode on horseback and alone to the capitol, and after tying his horse to the fence went into the Senate Chamber to take the oath of office. As a matter of fact, Jefferson walked to the capitol, not alone, but accompanied by several friends. At the inaugural ceremonies John Marshall, the chief justice and last remaining custodian of Federalism and nationality, sat on one side of the President, and Burr, the vice-President, on the other. It would be difficult to find three men more unlike. Marshall and Jefferson were similar only in being able and honest men. Burr, too, was not without ability; but no man lacking in moral stamina, as Burr certainly was, has ever attained to a high place in American history. He deceived himself, but no one else, when he remarked that “Great souls care little for small morals.” Burr represented a new and a dangerous element in American politics.

Of course the most important part of the ceremonies was the inaugural address. It was looked forward to with eager expectation. It was regarded not only as the utterance of a great man, but as the platform of a party which was being intrusted, for the first time, with the management of national affairs. The dominant note of the address was one of conciliation. The President was magnanimous in his hour of triumph, almost to a ridiculous extent. He insisted that the will of the majority must prevail, but that the rights of the minority should be protected. “Let us, then, fellow citizens,” he said, “unite with one heart and



Thomas Jefferson. *From the crayon drawing by James Sharpless, in Independence Hall, Philadelphia.*



one mind, let us restore to social intercourse that harmony and affection without which liberty, and even life itself, are but dreary things. And let us reflect that having banished from our land that religious intolerance under which mankind so long bled and suffered, we have yet gained little, if we countenance a political intolerance, as despotic, as wicked, and capable of as bitter and bloody persecutions. . . . We have called by different names brethren of the same principle. We are all republicans: we are all federalists. If there be any among us who would wish to dissolve this Union, or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated, when reason is left free to combat it. I know indeed that some honest men fear that a republican government cannot be strong; that this government is not strong enough. But would the honest patriot, in the full tide of successful experiment, abandon a government which has so far kept us free and firm, on the theoretic and visionary fear, that this government, the world's best hope, may, by possibility, want energy to preserve itself? I trust not." He then enumerated the advantages which the people of the United States enjoyed, and continued: "With all these blessings, what more is necessary to make us a happy and a prosperous people? Still one thing more, fellow-citizens, a wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government; and this is necessary to close the circle of our felicities." Mr. Jefferson then enumerated the "essential principles of our government" as follows: "Equal and exact justice to all men, of whatever state or persuasion, religious or political:—peace, commerce, and honest friendship with all nations, entangling alliances with none:—the support of the state governments in all their rights, as the most competent administrations for our

domestic concerns, and the surest bulwarks against anti-republican tendencies:—the preservation of the general government in its whole constitutional vigor, as the sheet anchor of our peace at home, and safety abroad; a jealous care of the right of the election by the people, a mild and safe corrective of abuses which are lopped off by the sword of revolution, where peaceable remedies are unprovided;—absolute acquiescence in the decisions of the majority, the vital principle of republics, from which is no appeal but to force, the vital principle and immediate parent of despotism:—a well disciplined militia, our best reliance in peace, and for the first moments of war, till regulars may relieve them:—the supremacy of the civil over the military authority:—economy in public expense that labor may be lightly burthened:—the honest payment of our debts and sacred preservation of the public faith:—the encouragement of agriculture, and of commerce as its handmaid:—the diffusion of information, and arraignment of all abuses at the bar of the public reason:—freedom of religion; freedom of the press; and freedom of person, under the protection of the Habeas Corpus:—and trial by juries impartially selected. These principles form the bright constellation, which has gone before us, and guided our steps through an age of revolution and reformation.” In the address the doctrine of State Rights appears in an unmistakable but not offensive way. Jefferson’s correspondence of this period discloses his real governmental views more correctly than his inaugural address, which was largely formal. In a letter to Gideon Granger, dated August 13, 1800, Jefferson states bluntly what seems to him to be the only legitimate function of the central government. “Let the general government,” he writes, “be reduced to foreign concerns only . . . and our general government may be reduced to a very simple organization and a very inexpensive one,—a few plain duties performed by a few servants.”

Opinions differ in regard to the merits of Jefferson’s first inaugural. Schouler calls it “a model of its kind,” and

John T. Morse, Jr., characterizes it as "an effusion rhetorical in excess and breathing boundless philanthropy." It is certainly a strong state paper, considering the time in which it was written and the limitations under which it was delivered. It is "rhetorical to excess" if judged by the rhetorical standards of the present—but so too is the Declaration of Independence. Standards have been changed since Jefferson's day. The rhetorical flourishes made the document effective in 1801; now they would constitute a source of weakness, if not of merriment. The stilted phrases and glittering generalities were expected and were in harmony with the spirit of the occasion. An inaugural address must always be more or less formal and conventional. It can never be strictly scientific and critical. The historians have made merry also over the statement, "We are all republicans: we are all federalists," but this should not be taken too seriously. It was simply a rhetorical burst to be construed only in a very general way. Jefferson knew very well that party differences still existed. He knew that Marshall, Hamilton, and Adams were not Republicans, and that George Clinton, Thomas Paine, and Albert Gallatin were not Federalists. If he were in doubt about the matter of party affiliations he might have received some illuminating information from Theodore Dwight, of New Haven. Mr. Dwight delivered an address in his home city on the 7th of July, 1801, about four months after the inauguration of Jefferson, in which he said: "We have now reached the consummation of democratic blessedness. We have a country governed by blockheads and knaves; the ties of marriage with all its felicities are severed and destroyed; our wives and our daughters are thrown into the stews; our children are cast into the world from the breast and forgotten; filial piety is extinguished, and our surnames, the only mark of distinction among families, are abolished. Can the imagination paint anything more dreadful on this side of hell?" All the above was untrue, but it showed that Theodore Dwight, at least, was not ready to be classed as a Republican.



The Cabinet, which had become sadly demoralized under Adams, was reorganized and strengthened by Jefferson. James Madison was appointed secretary of state, and Henry Dearborn, of Massachusetts, secretary of war. Levi Lincoln, also of Massachusetts, was made attorney-general. Samuel Dexter, secretary of the treasury under Adams, was retained by Jefferson for a short time, and was then succeeded by Albert Gallatin. Benjamin Stoddert also remained temporarily in charge of the navy department. This portfolio really went begging. Jefferson offered it to at least five different men, and it was finally accepted by Robert Smith, a Baltimore lawyer, whose only qualification for the office seemed to be that he had a brother, Samuel Smith, who knew something of naval affairs and who might be induced to give some good advice on the subject. Gideon Granger, of Connecticut, was placed at the head of the post office department, although that position had not attained to Cabinet importance, and did not do so until Jackson's time. The Cabinet was a harmonious, loyal, and fairly able body of men; although Madison and Gallatin were the only men in it of first-class importance.

Jefferson's first message to Congress was an important document, as it outlined in a general way the course which legislation was to take. It is also interesting as being the first message sent to Congress in writing, Washington and Adams having delivered their messages orally in the presence of Congress.

It was a part of the Republican programme to abrogate a portion of the Federalist legislation of the previous administration. Before discussing the attacks by which the repeal was accomplished, it will be well to note certain routine legislative matters of importance. The second census, taken in 1800, had made necessary a new apportionment of representatives. To this end a bill was passed fixing the ratio of representation at one for every thirty-three thousand inhabitants, and increasing the membership of the House of Representatives from one hundred and five to one hundred

and forty-one. Virginia was given twenty-two representatives; Pennsylvania, eighteen; New York, seventeen; Massachusetts, seventeen; and North Carolina, twelve. Delaware had only one, while the new State of Kentucky had six. On November 29, 1802, Ohio was admitted into the Union as the seventeenth State. It had but forty-five thousand people.

It was understood that the Republicans, as soon as their forces were well organized, would make an attack upon the Judiciary Act of 1801. Jefferson had remarked in his message that the courts thus created were unnecessary and should have the attention of Congress. The Republicans, too, were hostile to the growing power of the judiciary and desirous of curbing it. Consequently, John Breckenridge moved in the second year of the administration to repeal the obnoxious act of 1801. This act had established the Circuit Courts of the United States, and had provided for judges, marshals, and attorneys, involving an expense of about \$30,000 per year. The Republicans held that these courts were not necessary at the time, while the Federalists maintained that it was undignified for the Supreme Court judges to go out on circuits as was formerly the case. The main contention of the Federalists, however, was that the act could not be repealed constitutionally. It was held that the constitution assured a life term of office to a federal judge, and that to destroy the office was the same as to remove the incumbent. The acrimonious and rather monotonous debate continued day after day. William S. Giles, senator from Virginia, made a bitter attack on John Adams, and James A. Bayard, the Federalist leader, made an impassioned reply. Gouverneur Morris in a melodramatic manner besought his fellow members not to abandon the Constitution. "Cast not away this only anchor of our safety," he said. "I know the difficulties through which it was obtained. I stand in the presence of Almighty God and of the world, and I declare to you that if you lose this charter, never, no, never will you get another! We are now, perhaps, arrived at the

parting point. Here, even here, we stand on the brink of fate. Pause! Pause! For Heaven's sake, pause!" The Gallic strain in his nature was uppermost, but it did not move the Republicans from their fixed purpose. The bill passed the Senate by a majority of one, and the House by a vote of fifty-nine to thirty-two. It was approved by the President on the 8th day of March, 1802, and certain of John Adams's eleventh hour appointees were thus deprived of office.

The famous case of *Marbury versus Madison* was an echo of the "midnight appointments." The Jefferson administration looked upon these appointments as palpably fraudulent, and Mr. Madison, as secretary of state, refused to deliver a commission to Marbury. Marbury swore out a writ of mandamus to compel the delivery of his commission, but Chief Justice Marshall declined to take jurisdiction on the ground that the judiciary could not interfere to control the executive. He remarked incidentally, however, that "to withhold his commission is an act deemed by the Court not warranted by law, but violative of a legal vested right." All of which tended to alienate the administration still more from the judiciary in general and John Marshall in particular.

The narrowness of the majority on the repeal of the Judiciary Act of 1801 did not encourage the Republicans to continue their attacks on the judiciary along this line. Consequently their next step was to attempt to intimidate the bench by a series of impeachments. The President sent a special message to Congress calling attention to the misconduct of John Pickering, a United States District Judge, in New Hampshire. He was impeached in February, 1803, for drunkenness and violence while on the bench, and was convicted on March 12, 1804. He was a worthless character and the Federalists made a mistake in defending him.

The next case, however, that of Samuel Chase, of Maryland, Justice of the Supreme Court, was a very different

one, and a more serious matter for the Republican prosecutors. Chase was an ardent Federalist and had expressed his opinions from the bench in a very indiscreet way. On May 2, 1803, while the impeachment of Judge Pickering was in progress, Chase said to the grand jury: "The independence of the national judiciary is already shaken to its foundation . . . Our republican Constitution will sink into a mobocracy, . . . the worst of all possible governments." Chase was also said to have shown a bias in the trial of Callender under the sedition law. This was an offensive partisanship which the Republicans could not overlook. Jefferson took the initiative. He did not do it openly and boldly, however, as he had done in the case of Pickering. He knew well that Chase was a man of ability and integrity, and that there was a very small basis for an impeachment. His hand did not appear in the matter. John Randolph was the spokesman of Jefferson in the House, and on May 13, 1803, eleven days after the offensive utterance of Chase, Jefferson wrote to Nicholas the friend of Randolph, calling attention to the words of Chase at Baltimore. "Ought this seditious and official attack on the principles of our Constitution and on the proceedings of a State to go unpunished? . . . I ask these questions for your consideration; for myself it is better that I should not interfere." Jefferson was "sly, devilish sly." He would not interfere, but a suggestion from him was a command to his faithful henchmen. Pickering had been convicted on March 12, 1804, and on the same day Randolph moved against Chase. The eccentric Virginian soon found that he had undertaken a difficult task. There was no basis for the impeachment, and the able counsel retained by Chase put Randolph to rout. Jefferson discreetly refrained from taking any outward part in the contest. Burr, although under indictment at the time for the murder of Alexander Hamilton, presided at the trial. The end came on March 1, 1805. Chase had been impeached on eight counts, but was not convicted on any. The Republican programme to draw the claws

of the judiciary had failed. Some good, however, came from the impeachments. They caused the judges to be more discreet and less partisan in their utterances.

It will now be necessary to go backward in time, somewhat, to notice other features of the Republican programme. By an act of April 6, 1802, the Republicans repealed the laws authorizing internal taxes. These taxes had long been unpopular. The whiskey tax and the stamp tax had caused insurrections, and Jefferson was uncompromisingly hostile, as a matter of policy, to internal taxes as a source of revenue. Customs duties and the sale of public lands were now the principal sources of federal revenue. A heroic retrenchment in the expense of the army, navy, and civil list was proposed in order to make ends meet. It was even seriously proposed to abolish the mint in order to cut down expenses. It should also be added, however, that the copper cents as emblems of the sovereignty of the national government were objectionable to Randolph and other State Rights advocates.

This matter of retrenchment deserves a more extended notice. The Republicans had criticised the previous administration severely for its alleged extravagance in expenditures. Having cut off the internal taxes as a source of revenue it was necessary to retrench. It should be noted, too, that the time was exceedingly favorable for such retrenchment. The Peace of Amiens of 1802 had made peace between England and France, and the possibility of our being involved in a European war seemed remote. There was a lull also in Indian warfare, and, on the whole, the time was favorable for cutting down military and naval expenses. The expenditures of the government had increased with an alarming rapidity in the last decade. Large outlay had been necessary to put the country on a war footing. In 1793 the expenses of the general government were \$3,800,000, and in 1800 they had reached almost \$11,000,000. In the latter year \$6,000,000 was expended on the army and navy alone. The revenue derived

from taxes was also increasing, but not so rapidly as the expenditures, and the national debt had increased from \$80,000,000 in 1793 to \$83,000,000 in 1800. The formation of a plan whereby retrenchment could be effected devolved upon Gallatin, the secretary of the treasury. His plan was based on an annual revenue of \$10,800,000. Military expenses were to be reduced from \$6,000,000 to \$2,500,000 per annum, and civil expenses to \$1,000,000. The remainder, \$7,300,000, was to be applied to the national debt. The army and navy underwent what Jefferson termed a "chaste reformation." The army was reduced from four thousand men to two thousand five hundred. The vessels in commission were reduced from twenty-five to seven, and new constructions in the stocks were stopped. In 1802 less than \$1,000,000 was spent on the navy, and yet the general expenses grew steadily. To offset this the receipts from customs duties increased, and by 1809 the national debt had been reduced to \$45,000,000, or nearly fifty per cent. Gallatin's plan did not work out precisely as had been anticipated, but in the main it accomplished the ends aimed at. Internal taxes were abolished, expenditures decreased, and the national debt was diminished by one-half. This, on the face of it, is an excellent showing, but it should be borne in mind that fortifications were not kept up, officers and men had been dismissed from the army, the navy had been allowed to dwindle, and the expenditure of immense sums would be necessary to put the country again on a war footing. In the light of these facts the retrenchments were, in many cases, "penny wise and pound foolish." The War of 1812 proved them to be such. The administration of Jefferson, however, should have the credit for having taken one very wise precaution. On March 16, 1802, the United States Military Academy was established.

The Republicans were favorable to foreigners and could not be expected to allow the Naturalization Act, passed in the administration of John Adams, to remain upon the statute books. An act of 1790 had provided that an alien

might become naturalized after a residence of two years in the United States. An act of 1795 increased the term of residence to five years, and the act of 1798 provided for a residence of fourteen years. This last-named act was repealed on April 14, 1802, and the term of residence placed at five years, where it still remains.

Less to the credit of the Republican party was the repeal of the Bankruptcy law of 1800. Jefferson and his followers exalted agriculture above commerce and thought that legislation should have the former rather than the latter in mind. The act was repealed in December of 1803.

The civil service under Jefferson has been the subject of violent controversy. In a letter to Dr. Benjamin Rush, dated March 24, 1801, Jefferson outlined his policy in regard to appointments and removals, "I will expunge," he wrote, "the effects of Mr. Adams's indecent conduct, in crowding nominations after he knew they were not for himself, till 9 o'clock of the night, at 12 o'clock of which he was to go out of office. . . . Some removals must be made for misconduct. . . . Of the thousand of officers, therefore, in the United States, a very few individuals only, probably not twenty, will be removed; and these only for doing what they ought not to have done." This was a fair and a just platform, but Jefferson was not able to stand squarely upon it on account of the pressure brought to bear by hordes of hungry office-seekers. Disciples in high places also pleaded for the men who sought the loaves and fishes. On April 15, 1801, Gideon Granger remarked in a letter to Jefferson: "First,—the principle cannot be controverted, that it is just, fair and honorable that the friends of the government should have at least as great a proportion of the honors and offices of the government as they are of the whole people . . . for already it is used as an argument to affect our elections that the President used the Democrats to ride into office, that now seated there he has evinced his contempt for them, and will rely solely on the Federalists for support . . ." On

May 12th of the same year, Pierrepont Edwards, son of Jonathan Edwards, the famous preacher, wrote to Jefferson: "The Collector at Middletown deserves a dismissal on more grounds than one. Violent, irritable, priest-ridden, implacable, a ferocious Federalist, and a most indecent enemy to you and your administration,—one of the toasts drank on the 4th of July last at Middletown, was '*Thomas Jefferson* may he receive from his fellow Citizens the reward of his merit,' he drank it, adding, 'a halter.' I could fill a quire of paper with speeches of his equally violent and indecent." Mr. Granger advocated the removal of Mr. Goodrich, collector at New Haven, and Mr. Edwards recommended the appointment of Samuel Bishop in his stead. The result was that Jefferson removed Goodrich and gave the position to Bishop. The merchants of New Haven protested against the appointment of Bishop, largely on the ground that he was incapacitated by old age for the performance of the duties of the office. This protest brought a famous letter from the President on July 12, 1801, in which he defended his course in the removal of Goodrich, and concluded as follows: "It would have been to me a circumstance of great relief, had I found a moderate participation of office in the hands of the majority. I would gladly have left to time and accident to raise them to their just share. But their total exclusion calls for prompter correctives. I shall correct the procedure; but that done, disdain to follow it, shall return with joy to that state of things, where the only questions concerning a candidate shall be, is he honest? Is he capable? Is he faithful to the Constitution?" Jefferson removed a score of office holders as a rebuke to Adams. Then there followed a series of removals for what would now be termed offensive partisanship. A third series was made to provide "for some participation of the Republicans." At the end of the first half of the first term one hundred and seventy-eight out of three hundred and twenty-four important positions in the government were held by new appointees, that is about one-half of the previous incumbents



in those offices had been removed. At the end of Jefferson's second administration the entire civil service was Republican. Jefferson has sometimes been called, but unjustly so, the father of the spoils system. It is true though that he did not live up to his early protestations.

A few disconnected events of importance yet remain to be noted in connection with Jefferson's first administration. The death of Alexander Hamilton at the hands of Aaron Burr was little less than a national calamity, although Hamilton's public work seems to have been complete. Burr had been read out of the Republican party for duplicity in the election of 1801, and had inflicted himself upon the Federalists. That party had nominated him for Governor of New York in 1804. Hamilton was practising law in New York City at the time, and took up the cudgel against Burr. The bitter personal attacks of Hamilton stung Burr to desperation, and he challenged his opponent to combat. Hamilton, with characteristic personal bravery, but with a false sense of honor, accepted the challenge. The two men met at Weehawken on the 11th of July, 1804, and Hamilton fell, mortally wounded, and on the following day, at the early age of forty-seven the ablest of the brilliant group of constitutional statesmen died.

The election of 1800-1801 had revealed some serious defects in the machinery of the Electoral College. North Carolina and New York protested, in memorials to Congress, against the method of electoral voting, and suggested that "in all future elections of President and Vice-President of the United States, the persons voted for shall be particularly designated, by declaring which is voted for as President and which as Vice-President." The substance of this suggestion was embodied in an amendment—the twelfth—proposed on December 12, 1803, and declared in force September 25, 1804. The Federalists, as a party, opposed the amendment.

When the time for the election of 1804 drew near, there was no question in regard to its results. The people were

overwhelmingly in favor of Jefferson and the Republicans. The Federalists still numbered in their ranks many able men, but the party had practically degenerated into a faction. Vice-president Burr was ostracized and a congressional caucus nominated Jefferson and George Clinton, of New York. The Federalists, without a caucus apparently, agreed to support General Charles Cotesworth Pinckney and Rufus King. Jefferson and Clinton received one hundred and sixty-two electoral votes, while Pinckney and King received only fourteen. The Republicans carried every State with the exception of Connecticut and Delaware. Even Massachusetts, the home of John Adams and the stronghold of Federalism, was found in the Republican column.

Looking back upon the first administration of Jefferson from the vantage point of the present, it is clear that no radical changes were effected by the inauguration of the Republican party. The changes which have been discussed in this chapter were not fundamental. The general principles upon which the government was based remained unchanged. Gallatin's policy in the treasury department was not a departure from that of Hamilton. Jefferson saw that State sovereignty was one thing in theory but quite another in practice. In fact, the great fundamental constructive work of the Federalists endured. There was, it is true, much appearance of change. But the change was in externals rather than in essentials. That Jeffersonian republican simplicity which had been much lauded and ridiculed was not an essential principle in the government. Mr. Merry, the English minister, complained that he was introduced to the President while the latter stood "in slippers down at the heels, and both pantaloons, coat, and under-clothes indicative of utter slovenliness and indifference to appearances, and in a state of negligence actually studied." Mr. Merry concluded that his king, George III., had been insulted by this lack of ceremony. No vital principle was involved, however, as this republican simplicity was largely affectation and theatrical display.



## CHAPTER XVIII

### *THE LOUISIANA PURCHASE*

THE most important event in Jefferson's administration—in fact, one of the most important events in American history—was the purchase of the Louisiana territory from France in 1803. Before coming under the control of the United States, Louisiana had been bandied about a great deal without the knowledge or consent of her inhabitants. In 1763, France ceded the territory to Spain by a secret treaty which she afterward regretted. But France was hard pressed at the time; she was weak and wanted an ally and took this method of gaining the good will of Spain by compensating her for the loss of Florida. She always regretted the alienation of the territory, however, and endeavored on subsequent occasions to recover it. The favorable moment came in 1800. Marengo had been fought and won, and French affairs were in a more promising condition. Napoleon had visions of a great French empire in America and wanted to secure the Louisiana territory for this purpose. Berthier was sent as minister to Madrid in August, 1800, and soon secured a treaty accomplishing the desired object. By the treaty of October 1, 1800, Spain agreed to cede Louisiana and the Floridas to France, and was to receive in turn a kingdom of not less than a million inhabitants made out of the French conquests in northern Italy. It was arranged that the Duke of Parma, the son-in-law of Carlos IV., the King of Spain, was to rule over the newly

established kingdom. The King of Spain refused to part with the Floridas, and declined to ratify the cession of Louisiana until October 15, 1802. In the meantime, Lucien Bonaparte and Godoy had negotiated another treaty, March 21, 1801, which provided for the cession of Louisiana to France, and which was substantially the same as the one of October 1, 1800. The King of Spain gave his reluctant consent only with the agreement that France should not alienate Louisiana, but should restore it to Spain in case the Italian kingdom, Etruria, should be lost. These treaties were kept secret, as it was well known that there would be decided objections to the retrocession.

This whole matter was of vital interest to the United States, and to the West in particular. In fact, free navigation of Mississippi River was looked upon as a *sine qua non* of western development. The West was anxious to control the Mississippi, but as matters now stood, a foreign country had possession of both banks at the mouth, and the United States possessed only a precarious "right of deposit" at New Orleans. Force was openly advocated as a solution of the difficulty. When it was discovered that Spain had ceded Louisiana back to France, public opinion became more excited than ever, as the latter country was stronger and more to be feared.

Robert R. Livingston was nominated minister to France on March 5, 1801. He sailed in August of the same year and took up his duties in Paris at once. The appointment was a good one. Livingston was a member of an old and influential family in New York and had already rendered illustrious public service. As a diplomat he proved to be persistent and bold, and yet discreet.

In November of 1801, it began to be noised about that France was treating with Spain for a retrocession of Louisiana. This rumor concerned Livingston and he immediately made inquiry of Talleyrand. On December 10, 1801, Livingston wrote to Madison that Talleyrand had assured him that no such cession had taken place. Talleyrand





Washington, Lafayette, and Franklin. From the originals in possession of the Historical Society of Pennsylvania and the American Philological Society.

admitted, however, "that it had been a subject of conversation," but said that "nothing had been concluded or even resolved on in that affair." Technically, Talleyrand was speaking the truth, as the treaty of San Ildefonso was not signed by the King of Spain until October 15, 1802. Talleyrand's assurance, however, did not quiet the fears of Livingston and he ventured the opinion that the cession had been effected and that an army of occupation was being made ready to take possession of Louisiana. Subsequent events proved that his suspicions were well grounded. About the time that Madison learned from Livingston of Talleyrand's denial, he received from Rufus King, United States minister to England, a copy of the treaty ceding Louisiana to France. Livingston, still without positive information on the subject, was watchful and suspicious, and was proceeding on the supposition that the cession was made or was about to be made. He pressed Talleyrand for information and endeavored to take up the matter of the French Spoliation Claims and other matters, but could make no headway whatever. He argued in a series of papers, which came to the notice of Napoleon, that it was inexpedient for France to colonize Louisiana, but that she should sell the territory to the United States in case she procured it from Spain. In the meantime, intelligence was coming to Livingston that the preparations for the expedition to Louisiana were all but completed. He was almost in despair, and on September 1, 1802, he wrote: "there never was a government where less could be done by negotiation than here. There is no people, no legislature, no councillors. One man is everything." In the same letter he made the prophecy that the whole matter would "end in a relinquishment of the country . . . to the United States." Even before the contents of the treaty of San Ildefonso were disclosed, Livingston had advocated that the United States take forcible possession of the mouth of the Mississippi. This policy was already being strenuously advocated in the West, but the administration was in favor of a more pacific



policy. Jefferson sent instructions to Livingston to purchase the island of New Orleans from France, if possible; and Congress in secret session, voted \$2,000,000 for this purpose. There was a more strenuous objection at Washington to French control of Louisiana than there had been to Spanish control. On April 18, 1802, Jefferson wrote to Livingston: "The cession of Louisiana and the Floridas, by Spain to France, works most sorely on the United States." He said that three-eighths of the products of the United States would have to be marketed through New Orleans and that whatever country owned New Orleans, was "our natural and habitual enemy." He asserted that France had hitherto been our "natural friend," but that the acquisition of Louisiana would of necessity, make a new order of things. "France placing herself in that door," he continues, "assumes to us the attitude of defiance. Spain might have maintained it quietly for years." He characterized the disposition of Spain as "pacific," and the condition of the State as "feeble," and spoke of an alliance with Great Britain for the purpose of thwarting the designs of France. On December 15, 1802, Jefferson said in a message to Congress: "The cession of the Spanish province of Louisiana to France, which took place in the course of the late war, will, if carried into effect, make a change in the aspect of our foreign relations which will doubtless have just weight in any deliberations of the legislature connected with that subject."

The excitement in America was certainly not lessened when it became known that Morales, the Spanish Intendant of Louisiana, had abrogated the "right of deposit" at New Orleans. By proclamation of October 16, 1802, Morales denied to citizens of the United States the further use of New Orleans "as a place of deposit for merchandise, and free transit for our ships down the river to the sea." The "right of deposit" at New Orleans had been secured from Spain by the treaty of 1795 for three years, and had been allowed to continue for eight years. Under this

arrangement, the western traders were permitted to put down their goods at New Orleans for reshipment, upon the payment of a moderate storage fee. This privilege was of vital importance to the traders of the West, and its abrogation spurred Jefferson in America and Livingston in France to still greater efforts to obtain control of the city of New Orleans. Livingston pressed Talleyrand for a treaty involving the control of the mouth of Mississippi River. Talleyrand said that he had never seen so persistent a diplomat; but his persistence seemed to be of no avail, and on December 23, 1802, he wrote to the home government: "Do not absolutely despair." There was not much encouragement in Livingston's letters, and Jefferson decided to make a more determined effort by appointing an envoy extraordinary to coöperate with Livingston. For this important mission he selected James Monroe. The appointment was at this time a good one. Monroe was well and favorably known in France, and was especially popular in the West, and his selection did much to allay the excitement in that locality. The nomination was made on January 11, 1803. The importance which Jefferson attached to the mission is shown by a letter to Monroe, of the preceding day. "In this situation we are obliged," said Jefferson, "to call on you for a temporary sacrifice of yourself, to prevent this greatest of evils in the present prosperous tide of affairs. I shall to-morrow nominate you to the Senate for an extraordinary mission to France, and the circumstances are such as to render it impossible to decline; because the whole public hope will be vested in you. . . . In the meantime, pray work night and day to arrange your affairs for a temporary absence; perhaps for a long one." Two days after the nomination was sent in Jefferson again wrote to Monroe in regard to the French situation. "The agitation of the public mind," he said, "on occasion of the late suspension of our right of deposit at New Orleans is extreme. . . . Remonstrances, memorials, etc., are now circulating through the whole of the western country and

signing by the body of the people. . . . If we cannot by a purchase of the country insure to ourselves a course of perpetual peace and friendship with all nations, then as war cannot be distant, it behooves us immediately to be preparing for that course, without, however, hastening it, and it may be necessary (on your failure on the continent) to cross the Channel. . . . As to the time of your going you cannot too much hasten it, as the moment in France is critical." On February 3d, following, the President wrote to Minister Livingston in the same strain intimating that war with France was probable and an alliance with Great Britain desirable. These are unfamiliar sentiments to flow from the pen of Jefferson, but when American interests were to be protected, he took what seemed to him to be the best course, regardless of former friendships or enmities.

The general object of the mission was to secure "a treaty or convention with the First Consul of France, for the purpose of enlarging, and more effectually securing, our rights and interests in the River Mississippi, and in the territories eastward thereof." It should be noted that the purchase of the whole of Louisiana was not contemplated. The instructions are definite on this point. "The object of them [the instructions] will be to procure a cession of New Orleans and the Floridas to the United States, and consequently the establishment of the Mississippi as the boundary between the United States and Louisiana." It was thought in the United States at the time that the Floridas also had been ceded to France by the treaty of 1800. The treaty did contain a clause to that effect which was stricken out by the King of Spain. The authorities at Washington were not apprised of the change. The American negotiators were authorized to expend \$10,000,000, if necessary, to procure the desired territory. In case France should refuse to sell even a site for a town, an effort should be made to revive the old "right of deposit" of 1795. In the event of failure, further instructions were to be awaited.

In addition to the pecuniary compensation, the negotiators were authorized to concede to France certain commercial privileges for a period of ten years. The people of the territory ceded by France to the United States were to be incorporated into the Union with the full privileges of citizenship, and if necessary, the possession of the west bank of the river was to be guaranteed to France.

The affair did not look promising at the outset. Livingston had been attempting to do practically what he and Monroe were commissioned to accomplish, but to no avail. The First Consul and Talleyrand would listen to no proposition for the alienation of territory. It is now known that Napoleon prized Louisiana very highly. He is said to have remarked: "Whatever nation shall hold the valley of the Mississippi, will be the most powerful nation on earth." He regretted the fatal necessity which compelled France to part with the territory in 1762, and could not rest until it had been regained. Now that he had accomplished his purpose, he was in no mood to alienate even a small part of the coveted domain. Under these circumstances the prospects for success were not bright when Monroe sailed for Europe on the 8th of March, 1803. The appointment of Monroe was well received in the West as an evidence of good faith on the part of the administration, but very little was expected from the mission. There was a general feeling that force would be resorted to ultimately. Senator Ross, of Pennsylvania, offered a resolution, which was discussed in both houses of Congress, looking toward the forcible seizure of New Orleans. An appropriation of \$50,000,000 was contemplated, and an army of fifty thousand men was to be sent into Louisiana before the French could take possession. The resolution was supported by Gouverneur Morris and other leading men. It was thought best, however, to exhaust all peaceful methods, although there was little faith in them, before taking warlike steps.

Just at this juncture, when diplomatic success seemed all but impossible, the whole situation suddenly cleared up.

On the 11th of April—before the arrival of Monroe—Talleyrand, who had hitherto steadfastly refused to consider the cession of even an insignificant fraction of Louisiana, startled Livingston by asking if the United States would purchase the whole of the territory, and if so, what price would be paid for it. Here was a remarkable change of front. The real cause of the determination to sell Louisiana to the United States lay in the fear that Great Britain would gain possession of the country. Napoleon, despairing of his ability to hold Louisiana, would rather turn it over to the United States than have it fall into the hands of his most powerful enemy. He was also in need of money for the war then imminent. These two facts, with emphasis on the first, explain fully the apparently inconsistent course which Napoleon adopted. A perusal of the memoirs of Lucien Bonaparte and of the history written by Barbé-Marbois, will establish this fact. Lucien Bonaparte was a younger brother of Napoleon—the one who had negotiated the treaty of March 21, 1801, with Spain—and he relates in his memoirs the inner reasons for the change of attitude on the part of his illustrious brother. He says that his brother Joseph met him at the theatre (probably on the evening of April 6th) and astonished him by saying that their brother Napoleon had concluded to sell Louisiana to the United States in order to obtain money for the war. The brothers thought the idea an insane one and determined to attempt to persuade Napoleon to hold the territory. On the following day they called on him, and in the course of the conversation it developed that Joseph and Lucien did not approve the plan of their brother. Their disapproval did not tend to move the stubborn First Consul, and he remarked laconically: "Only take note, Lucien, that I have made up my mind to sell Louisiana to the Americans." When the brothers urged in opposition that the Chambers would not ratify the sale, Napoleon laughed outright at the idea, and said that he would ratify it himself. He did, later in the interview, condescend to give some explanation of his

determination. Lucien writes: "It was certainly worth while, urges Napoleon, first, to sell when you could, what you were certain to lose, 'for the English, who have seen the colony given back to us with just displeasure, are aching for a chance to capture it, and it will be their first *coup de main* in case of war.'" Lucien said that he looked upon the sale under the circumstances as disgraceful to France, and said that he did not think that England really wanted it. When Lucien objected that the sale was "unconstitutional," Napoleon laughed uproariously and called it "a good joke." . . . "Yes, unconstitutional attempt upon the national sovereignty.—Go on—go on," cried Napoleon from his bath tub, "that's quite too fine a thing to be cut short, Sir Orator of the clubs! But at the same time take note of this, you and Monsieur Joseph, that I shall do just as I please; that I detest, without fearing them, your friends the Jacobins, not one of whom shall remain in France if, as I hope, things continue to rest in my hands—and that, in fine, I snap my fingers at you, and your national representation." The above interview between the First Consul and his brothers, was punctuated throughout by angry and sarcastic outbursts on the part of Napoleon, accompanied when the provocation was extreme by splashes of cologne-scented water from the bath tub. The result was what might have been expected—Napoleon remained unchanged.

Three days later, on Easter Sunday, April 10, 1803, Napoleon had an important interview on the Louisiana question with two of his ministers; one of them was Barbé-Marbois, minister of the public treasury, and the other probably Decrès, minister of marine. A complete account of this important interview is given by M. Barbé-Marbois in his *Histoire de la Louisiane*. Napoleon set before the ministers his plan for the sale of Louisiana, "addressing them," as Marbois says, "with that vehemence and passion which he particularly manifested in political affairs." "I know," said he, "the full value of Louisiana, and I have been desirous of repairing the fault of the French

negotiator who abandoned it in 1763. A few lines of a treaty have restored it to me, and I have scarcely recovered it when I must expect to lose it . . . The English have successively taken from France, Canada, Cape Breton, Newfoundland, Nova Scotia, and the richest portions of Asia. They are engaged in exciting troubles in St. Domingo. They shall not have the Mississippi which they covet . . . They have twenty ships of war in the Gulf of Mexico, they sail over those seas as sovereigns, whilst our affairs in St. Domingo have been growing worse every day . . . The conquest of Louisiana would be easy, if they only took the trouble to make a descent there. I have not a moment to lose in putting it out of their reach. I know not whether they are already there. It is their usual course, and if I had been in their place, I would not have waited. I wish, if there is still time, to take from them any ideas that they may have of ever possessing that colony. I think of ceding it to the United States . . . They only ask of me one town in Louisiana, but I already consider the colony as entirely lost, and it appears to me that in the hands of this growing power, it will be more useful to the policy and even to the commerce of France, than if I should attempt to keep it."

After Napoleon had thus expressed himself, the ministers ventured their opinions—that of Marbois coinciding with the opinion of the First Consul and that of the second minister opposed to it. "We should not hesitate," said Marbois, "to make a sacrifice of that which is about slipping from us. War with England is inevitable; shall we be able with very inferior naval forces to defend Louisiana against that power? The United States, justly discontented with our proceedings, do not hold out to us a solitary haven, not even an asylum, in case of reverses. They have just become reconciled with us, it is true; but they have a dispute with the Spanish government, and threaten New Orleans, of which we shall have only momentary possession. At the time of the discovery of Louisiana the neighboring

provinces were as feeble as herself; they are now powerful, and Louisiana is still in her infancy. The country is scarcely at all inhabited; you have not fifty soldiers there. Where are your means of sending garrisons thither? Can we restore fortifications that are in ruins, and construct a long chain of forts upon a frontier of four hundred leagues? If England lets you undertake these things, it is because they will drain your resources, and she will feel a secret joy in seeing you exhaust yourself in efforts of which she alone will derive the profit. You will send out a squadron; but, while it is crossing the ocean, the colony will fall, and the squadron will in its turn be in danger. Louisiana is open to the English from the north by the great lakes, and if, to the south, they show themselves at the mouth of the Mississippi, New Orleans will immediately fall into their hands. . . . This conquest would be still easier to the Americans; they can reach the Mississippi by several navigable rivers, and to be masters of the country it will be sufficient for them to enter it. The population and resources of one of these two neighbors every day increase; and the other has meantime means sufficient to take possession of everything that can advance her commerce. . . .

"The French have attempted to form colonies in several parts of the continent of America. Their efforts have everywhere proved abortive. The English are patient and laborious, they do not fear the solitude and silence of newly settled countries. The Frenchman, lively and active, requires society; he is fond of conversing with his neighbors. He willingly enters on the experiment, but at the first disappointment, quits the spade or axe for the chase."

The second minister expressed himself to the opposite effect.

"We are still at peace with England," he said, "the colony has just been ceded to us, it depends on the First Consul to preserve it. It would not be wise in him to abandon, for fear of a doubtful danger, the most important establishment that we can form out of France, and



despoil ourselves of it for no other reason than the possibility of a war; it would be as well, if not better, that it should be taken from us by force of arms. If peace is maintained the cession cannot be justified, and this premonition of ill-founded apprehension would occasion the most lively regrets. To retain it would, on the other hand, be for our commerce and navigation an inestimable resource, and to our maritime provinces the subject of universal joy. The advantages which we have derived from the colonies are still present to every mind. . . . To this you will not submit; you will not acknowledge by your resignation that England is the sovereign mistress of the seas, that she is there invulnerable, and that no one can possess colonies except at her good pleasure. It does not become you to fear the kings of England. . . . France, deprived of her navy and her colonies, is stripped of half her splendor, and of a great part of her strength. Louisiana can indemnify us for all our losses. There does not exist on the globe a single port, a single city susceptible of becoming as important as New Orleans, and the neighbourhood of the American states already makes it one of the most commercial in the world."

The minister expressed confidence in the future greatness of Louisiana, due largely to an isthmian canal.

"The climate," said he, "is the same as that of Hindostan, and the distance is only a quarter as great. The navigation to the Indies, by doubling the Cape of Good Hope, has changed the course of trade from Europe, and ruined Venice and Genoa. What will be its direction, if at the isthmus of Panama a simple canal should be opened to connect the one ocean with the other? The evolution which navigation will then experience will be still more considerable, and the circumnavigation of the globe will become easier than the long voyages that are now made in going to and returning from India. Louisiana will be on this new route, and it will then be acknowledged that this possession will be of inestimable value."

Napoleon put an end to the interview without declaring his ultimate intentions in regard to Louisiana. The discussion had been prolonged far into the night, and the two ministers remained at St. Cloud. At daybreak, Napoleon summoned Marbois and asked him to read the despatches which the French ambassador had just sent from London. The First Consul was informed in these despatches "that naval and military preparations of every kind were making with extraordinary rapidity." Napoleon was now more decided than ever. "Irresolution and deliberation," said he, "are no longer in season. I renounce Louisiana. It is not only New Orleans that I will cede, it is the whole colony without any reservation. I know the price of what I abandon, and I have sufficiently proved the importance that I attach to this province, since my first diplomatic act with Spain had for its object the recovery of it. I renounce it with the greatest regret. To attempt obstinately to retain it would be folly. I direct you to negotiate this affair with the envoys of the United States. Do not even await the arrival of Mr. Monroe; have an interview this very day with Mr. Livingston; but I require a great deal of money for this war, and I would not like to commence it with new contributions. . . . If I should regulate my terms according to the value of these vast regions to the United States the indemnity would have no limits. I will be moderate, in consideration of the necessity in which I am of making a sale. But keep this to yourself. I want fifty millions, and for less than that sum I will not treat; I would rather make a desperate attempt to keep those fine countries. To-morrow you shall have your full powers. . . . Begin by making them the overture, without any subterfuge. You will acquaint me, day by day, hour by hour, of your progress. . . . Observe the greatest secrecy, and recommend it to the American ministers; they have not a less interest than yourself in conforming to this counsel. You will correspond with M. de Talleyrand, who alone knows my intentions."

These interviews, then, between Napoleon and his brothers Joseph and Lucien, held probably on the 7th of April, and between Napoleon and his two ministers on April 10, and between Napoleon and Marbois on the morning of April 11, show clearly the reasons which impelled the First Consul to sell Louisiana. Too great stress should not be placed on the verbal correctness of the utterances here quoted, as Lucien's memoirs were probably not written until about nine years after the purchase, and the history by Marbois did not appear until 1829. There is, however, no reason to doubt the general correctness of the memoirs or the history.

The negotiations between Marbois and Livingston began on April 11, as Napoleon had directed. Livingston was suspicious and "received, without putting entire confidence in it, the overture which was made to him by Marbois of a cession of the whole province." He "feared that the overtures relating to Louisiana were only an artifice to gain time." Monroe arrived at Paris on the following day, April 12, and found his colleague still sceptical. "I wish," said Livingston to Monroe, "that the resolution offered by Mr. Ross in the Senate had been adopted. Only force can give us New Orleans. We must employ force. Let us first get possession of the country and negotiate afterwards."

Marbois, however, soon convinced the American ministers that his proposition was made in sincerity. This done, the transaction was easily and speedily accomplished. In less than three weeks the price was agreed upon and the documents signed. The appointment of Marbois to conduct the negotiations on the part of France was a fortunate event. He had lived in the United States for many years, had an extensive acquaintance among public men in America and knew American temper and conditions. His wife was a Philadelphian and constituted a bond of sympathy between him and the United States. The matter might very naturally have been intrusted to Talleyrand, but it is probable that Napoleon did not have the utmost confidence

in him and certainly the Americans had seen enough of his duplicity and unscrupulous cunning.

The instructions of the ministers did not contemplate such a contingency as this, but Livingston and Monroe were not the men to lose such a splendid opportunity on a mere technicality. They quickly resolved to make the purchase and hope for an *ex post facto* approval by the home government. A treaty of cession and two conventions were drawn up and signed on April 30, 1803. By the treaty France ceded to the United States, "forever and in full sovereignty," the territories of Louisiana, "with all their rights and appurtenances, as fully and in the same manner as they had been acquired by the French Republic in virtue of the treaty with Spain." By the first convention, of the same date, the United States engaged to pay to France "the sum of sixty millions of francs, independent of the sum which shall be fixed by another convention for the payment of debts due by France to citizens of the United States." A third convention provided for the assumption of these debts by the government of the United States to an amount not exceeding twenty millions of francs. The negotiations were apparently carried on in a sincere and friendly spirit. Marbois succeeded in getting more for the territory than the price which Napoleon set upon it, yet his demands were very moderate. James Monroe, writing in 1828, remarked: "I add with pleasure that the conduct of M. Marbois, in every stage of the negotiation, was liberal, candid, and fair, indicating a very friendly feeling for the United States, and a strong desire to preserve the most amicable relations between the two countries." And again, later in the same year, he wrote: "Never was a transaction of such importance conducted with more candour and honour."

Napoleon ratified the treaty on the 22d of May, and is said to have remarked after the signing: "This accession of territory strengthens forever the power of the United States; and I have just given to England a maritime rival that will

sooner or later humble her pride." The negotiators, too, realized that they had been engaged in a great business. Says Marbois: "A sentiment superior even to glory seemed to animate the three ministers, and never perhaps did negotiators taste a purer joy. As soon as they had signed the treaties, they rose and shook hands, when Livingston, expressing the greatest satisfaction, said: 'we have lived long, but this is the noblest work of our whole lives. The treaty which we have just signed has not been obtained by art or dictated by force; equally advantageous to the two contracting parties, it will change vast solitudes into flourishing districts. From this day the United States take their place among the powers of the first rank; the English lose all exclusive influence in the affairs of America. . . . The instruments which we have just signed will cause no tears to be shed; they prepare ages of happiness for innumerable generations of human creatures. . . .'"

Formal ratifications were exchanged by the two governments in October, 1803, and on the 20th of December, following, the territory was surrendered to the United States.

The territory thus transferred extended from the British possessions on the north, to the Gulf of Mexico on the south, and from Mississippi River on the east to the Rocky Mountains on the west. In addition to this immense territory the cession included a narrow strip of land on the east bank of Mississippi River and near its mouth. The geography of the country was not well known, and the boundaries specified in the treaty were of necessity vague. The treaty of San Ildefonso (October 1, 1800) had transferred to France "the colony or province of Louisiana with the same extent that it now has in the hands of Spain, and that it had when France possessed it. . . ." In 1803 France in turn transferred the territory to the United States with the same vague specification of boundaries. It was impossible to do otherwise. Says Marbois: "A geographical chart was before the plenipotentiaries. They negotiated with entire good faith; they frankly agreed that these matters were

full of uncertainty, but they had no means of quieting the doubts." Napoleon, however, was not much concerned about these uncertainties. When his attention was called to them he remarked: "If an obscurity did not already exist, it would perhaps be good policy to put one there."

A great deal has been said in regard to the credit which should be accorded the American negotiators in this great transaction. James Q. Howard, in his book on the *Louisiana Purchase*, goes into raptures over the diplomacy of Livingston. He says: "It makes one's blood tingle to see this one sagacious American patriot contending single-handed for the right against Talleyrand, Berthier, Marbois, and the Hero of Marengo, with a nation in arms behind him! Can it be that the learned jurist, the trained diplomatist, the virtuous statesman, is more than a match for the young and yet inexperienced first consul? So it would seem." As a matter of fact, both Monroe and Livingston did their parts well. Livingston had represented the United States with great ability at the French capital for nearly two years before the treaty was made, but neither he nor Monroe had any appreciable influence in inducing Napoleon to sell Louisiana. He was not "more than a match" for Napoleon, as indicated in the rhetorical outburst of Mr. Howard, for the two men had never contended on the Louisiana question. Livingston never sought the purchase of the entire territory. That proposition came from Napoleon because of a fear of England and a lack of funds for war. Monroe and Livingston do, however, deserve credit for brushing aside technicalities and availing themselves of an opportunity which would, may be, never occur again.

It is perhaps needless to say that the treaty created great astonishment in Washington. It was clearly advantageous to the United States—but what could a loose constructionist president do with such a document? If the cession had taken place under Federal auspices, Jefferson and his followers would have been voluble in their protestations. The Constitution would have lain bleeding and mangled, and the

"rights of man" would have been put in jeopardy. The situation was rather embarrassing. Theory seemed to conflict with practice, but Jefferson acted the statesman, not the stubborn and unpractical theorist. He approved the treaty and sent it to the Senate for ratification.

The factious Federalist opposition was up in arms immediately against it. The acquisition of the territory seemed to many Federalists on first thought a master stroke. It solved the Mississippi question for all time, it doubled the area of the United States, and was not unconstitutional according to liberal construction views,—but could anything good come out of Monticello? It was objected that the East might become depopulated by the emigration to the territory of Louisiana; that the West would eventually secede from the Union; and that the price—\$15,000,000—was exorbitant. The Federal papers showed great ingenuity in attempting to impress upon the minds of the people the magnitude of the sum.

The sum of \$15,000,000 seemed enormous to the editors of 1803, and yet in 1896 the Louisiana purchase produced corn enough to sell for nearly thirteen times that amount, to say nothing of other agricultural and mineral products.

An attack was made upon the treaty on the ground that it was unconstitutional. This was one of the first objections which occurred to the President himself. He was not willing to sacrifice the territory because of the objection, but he wished to have an amendment attached to the Constitution providing for the acquisition of territory. He found it impossible, however, to devise an amendment which would meet the approval of the Cabinet and other advisers. Finally it was suggested to him that the treaty-making power conferred upon the President and Senate by the Constitution would cover the case. He found consolation in this, and when he sent his message to Congress on October 17th, there was no mention of an amendment. Two days later the treaties were ratified by the Senate, the Federalists voting in the negative. In the House there was



William Richardson Davie,  
Minister to France.



Oliver Ellsworth,  
of Connecticut.



Peter Muhlenberg,  
of Pennsylvania.

*From the originals in Independence Hall, Philadelphia.*





also a contest over the treaties, which, of course, could not go into effect without an appropriation. Roger Griswold, of Connecticut, was the Federalist leader, and he led the attack on the treaties. He contended that they were both unconstitutional and impolitic. He held that the treaty-making power did not include the acquisition of territory, and that the article which gave French and Spanish ships special privileges in the port of New Orleans was contrary to that clause of the Constitution which declares that no preference should be given by any regulation of commerce to the ports of one State over those of another. It was also contended that the treaties regulated commerce with France and Spain, and that the power to regulate commerce was vested in Congress and not in the President and Senate alone. The purchase was pronounced impolitic because the area was too vast, and because it contained an alien population with different languages, religions, and customs.

The Republicans held in reply that the acquisition of territory is a sovereign right, whether by conquest or by purchase. In case of purchase the transaction is by treaty, and the President and Senate have the supreme power. The "general welfare" clause was also pressed into service. The Republicans prevailed and it was resolved by a vote of ninety to twenty-five that provisions should be made to carry the treaties into effect; that the matter of a provisional form of government should be referred to a special committee; and that the Ways and Means Committee be directed to provide the purchase money.

A bill for a provisional government was immediately introduced and precipitated another wrangle. It was provided in the bill that the President should administer the affairs of the territory until a permanent government was devised by Congress—the old Spanish laws and forms to remain in authority in the meantime. This provision, it was said, made the President a Spanish despot. It combined in him the executive, the legislative, and the judicial functions of the government. The Republicans cited the

territories of Indiana and Mississippi as precedents, and carried the measure for a provisional government on the 31st of October, 1803. The New England Federalists were exceedingly angry and talked freely of secession. The South and the West were making themselves felt in American politics, and incidentally the policy of strict construction was doomed.

The constitutionality of the purchase is no longer in doubt. Several acquisitions of territory have been made since 1803 with the approval of the courts and of the leading jurists. Chief Justice Marshall, in rendering the opinion of the Supreme Court in the case of *The American Insurance Company versus Canter*, said: "The Constitution confers absolutely on the Government of the Union the power of making wars and making treaties, consequently the government possesses the power of acquiring territory either by conquest or treaty."

The formal transfer of the Louisiana territory from Spain to France was made on November 30, 1803, and about three weeks later, December 20th, the French officials in turn transferred it to the United States. The ceremony in the latter case was solemn and impressive. The flag under which so much of the North American continent was explored was hauled down never to rise again.

The significance of the purchase was obvious. By it the area of the United States was doubled. The purchase embraced about eight hundred and seventy-five thousand and twenty-five square miles or about five hundred and sixty million sixteen thousand acres. Its area is more than seven times that of Great Britain and Ireland; it is larger than Great Britain, Germany, France, Spain, Portugal, and Italy combined. Practically twelve States, in addition to Oklahoma and Indian Territories, have been erected in this vast domain. The primeval forests of 1803 have developed into the magnificent commonwealths of Louisiana, Missouri, Arkansas, Iowa, Minnesota, Kansas, Nebraska, Colorado, North Dakota, South Dakota, Montana, and Wyoming,

with Oklahoma and Indian Territories rapidly preparing for statehood. The population is now nearly fifteen millions, or about twenty per cent of the entire population of the United States. The sum total of the products of the territory as set forth in the reports of the department of agriculture and in the census tables is simply astounding. The human mind cannot comprehend it without resort to the comparative method.



## CHAPTER XIX

### *FOREIGN AFFAIRS*

ASIDE from the establishment of Republican control, the main interest in Jefferson's administration centres in foreign affairs. During these years there was important international contact with France, England, Spain, and the Barbary States.

It seems almost incredible at the present time that the insignificant States of northern Africa should have been able for so many years to plunder the commerce of the world with impunity. It is not to the credit of the United States and the European powers that they purchased immunity from these pirates by the payment of tribute; yet they exacted such tribute with great regularity from the powerful nations of Europe, who found it more convenient, and perhaps cheaper, to pay blackmail than to administer the punishment so richly deserved. The United States followed the example of the nations of Europe, and in 1787 purchased immunity from Morocco, and later from Algiers, Tunis, and Tripoli. The character of the dealings between the United States and the Barbary States is well illustrated by the instructions given to Mr. Barclay, agent to Algiers in 1792. These instructions seem to have taken it for granted that an annual tribute would be given in return for peace. "The only question then is," the instructions say, "what sum of *money* will we agree to pay them annually for peace. . . . You will, of course, use your best

endeavors to get it at the lowest sum practicable; whereupon I shall only say, that we should be pleased with \$10,000, contented with \$15,000, think \$20,000 a very hard bargain; yet go as far as \$25,000, if it be impossible to get it for less; but not a copper further, this being fixed by law as the utmost limit. These are meant as annual sums. If you can put off the first annual payment to the end of the first year, you may employ any sum not exceeding that in presents, to be paid down; but if the first payment is to be made in hand, that and the presents cannot by law exceed 25,000 dollars."

It was also the custom of the Barbary pirates, in addition to preying upon commerce, to seize foreigners and hold them for ransom. Upon this subject Mr. Barclay's instructions proceed as follows: "It has been a fixed principle with Congress to establish the rate of ransom of American captives with the Barbary states, at as low a point as possible, that it may not be the interest of these States to go in quest of our citizens in preference to those of other countries. Had it not been for the danger it would have brought on the residue of our seamen, by exciting the cupidity of these rovers against them, our citizens now in Algiers would have been long ago redeemed, without regard to price. The mere money for this particular redemption neither has been, nor is, an object with anybody here. It is from the same regard to the safety of our seamen at large, that they have now restrained us from any ransom unaccompanied with peace; this being secured, we are led to consent to terms of ransom to which, otherwise, our government would never have consented. . . . You will consider this sum, therefore, say \$27,000, as your ultimate limit, including ransom, duties, and gratifications of every kind."

This same policy was continued, under protest, down to the time of Jefferson. In a letter to Wilson Cary Nicholas, written June 11, 1801, the President says: "You will have seen an alarm in the newspapers on the subject of the Tripolitans and Algerians. The former about May, a

twelve-month, demanded a sum of money for *keeping* the peace, pretending that the sum paid as the price of the treaty was only for *making* peace. . . . With respect to Algiers, they are in extreme ill humour. We find three years arrears of tribute due to them. This you know has not proceeded from any want of the Treasury. Our tribute to them is nominally 20,000 D. to be delivered in stores, but so stated that they cost us 80,000 D. A negotiation had been set on foot by our predecessors to commute the stores for 30,000 D. cash. It would be an excellent bargain, but we know nothing of the result. We have, however, sent them 30,000 D. by our frigates as one year's tribute, and have a vessel ready to sail with the stores for another year. . . . We have taken these steps towards supplying the deficiencies of our predecessors merely in obedience to the law; being convinced it is money thrown away, and that there is no end to the demand of these powers, nor any security in their promises." About two years later, March 22, 1803, a letter from Jefferson to Madison discloses a similarly humiliating state of affairs. "I think," writes the President, "the greatest dispatch should be used in sending either the gun carriages or money to Simpson for the Emperor of Morocco, and the stores to Algiers; . . . We must keep these two powers friendly by a steady course of justice oiled occasionally with liberality."

It was plain that this iniquitous state of affairs could not continue. The payment of tribute was only a temporary sedative, and when one State was placated another presented its demands. The United States, however, was not in a good condition to substitute force for tribute. The Act of March 3, 1801, authorized the president to sell all the vessels of the navy with the exception of thirteen frigates, and of these only six were to be left in commission. The number of naval officers was also greatly reduced. It was soon seen, however, that the depredations of the Barbary States and of the European powers would necessitate the strengthening of the navy. This work was taken up in



1803. The policy was a favorite one with John Adams and the Federalists, but its adoption by the Republicans should occasion no surprise, as the two parties were now exchanging policies at a bewildering rate.

In 1803 the United States navy moved against Tripoli with some energy, and in 1805 Commodore Preble compelled that power to cease its depredations and make a treaty. This exhibition of activity came as a surprise to all the north African States and had an excellent moral effect upon them. For several years our commerce was unmolested, and Europe soon after abandoned the system of paying blackmail. The Barbary War also reacted favorably upon the American navy. It gave an added prestige to that department of the service and furnished a practical training which was of value in the War of 1812.

The greatest danger to American commerce, however, lay not in the depredations of the comparatively feeble African States, but in the assaults of the two most powerful nations of Europe,—France and Great Britain. Napoleon approved the treaty for the cession of Louisiana on the 22d of May, 1803, and on the following day the European war began anew. The Peace of Amiens was at an end and France and Great Britain were preparing for war. This was a serious matter for the United States. All the prominent nations of Europe were involved in the war, either on one side or the other, and as a result of this the United States became the most important neutral carrying power. Depredations upon neutral commerce were soon to follow the outbreak of hostilities, and the United States was destined to be the principal sufferer. France and Great Britain bore no particular enmity toward the United States, but neither would hesitate to make aggressions on our commerce in case the other could be injured thereby. For this reason the resumption of hostilities in Europe was looked upon with grave concern in the United States. Jefferson assumed a neutral attitude. He was no longer the French partisan of the early revolutionary days. In fact, he had recently

intimated that an alliance with Great Britain would be advantageous. His chief concern in this instance was to protect American interests. On October 4, 1803, he wrote to Dr. Benjamin Rush: "Tremendous times in Europe! How mighty this battle of lions & tygers! With what sensations should the common herd of cattle, look on it? With no partialities, certainly. If they can so far worry one another as to destroy their power of tyrannizing, the one over the earth, the other the waters, the world may perhaps enjoy peace, till they recruit again." The President's message of October 17, 1803, was similarly neutral in tone. In regard to the European war, Jefferson said: "We have seen with sincere concern the flames of war lighted up again in Europe, and nations with which we have the most friendly and useful relations engaged in mutual destruction." He advocated a policy of strict neutrality. .

There was good reason for the "sincere concern" with which Jefferson viewed the resumption of hostilities in Europe. The blow to our commerce was to be especially severe. The Louisiana treaty and the European war gave a remarkable incentive to our shipping. Products from the French West Indies were imported and then reshipped. The revenue from customs duties increased from \$14,000,000 to \$20,000,000 in a single year. There was decided prosperity in American shipping when the blight came in the form of depredations on the part of France and Great Britain. In order to appreciate the illegality of these depredations, it may be well to inquire at this point, what are the rights of neutrals in regard to commerce and what restrictions must be observed by them? In the first place, it is a well settled principle of international law that all goods denominated "contraband of war" may be seized in whatever vessels they happen to be, if destined for the port of an enemy. Again, a nation in time of war, may put the ports of its enemy under blockade, in so far as it has the power practically to do so. In such a case all vessels bound for the blockaded ports, or found suspiciously

near them, are liable to capture. In case an unsuccessful attempt is made to "run the blockade" the vessel and its cargo are liable to confiscation. The blockade, however, must be actual, not on paper merely. There must be a blockading fleet off the port to enforce the decree. A "paper blockade," such as the French and the British frequently resorted to at this time, is a fraud and finds no warrant whatever in the law of nations. The British also insisted upon the "right of search" and of impressment. There is a legitimate way in which certain vessels may be searched. International law recognizes the "right of search" within definite limitations. In the first place, national vessels of neutral powers may never be searched. Merchant vessels, however, may be searched to detect piracy or goods "contraband of war." In other cases a search is not allowable. The right does not include a search for seamen, or their impressment. Much less does it include the impressment of seamen who have never been in the service of the searching nation, and who are of a different nationality. It was the abuse, then, of the right of search which the United States objected to. The British frequently conducted the searches without good grounds, and with an insolence, arrogance, and brutality which were exasperating in the extreme. The fact is, that Britain was sorely in need of seamen and did not hesitate to stop American vessels on the pretext of searching for British mariners. In her extremity it frequently happened that American seamen who had never set foot upon the soil of the British Isles were forcibly impressed into his majesty's service. In this way thousands of American sailors were wrongfully pressed into an alien service, and British vessels were constantly on the watch near the port of New York. In England the situation was no less strenuous. Press-gangs scoured the seaport towns and forced their luckless victims to do service on board ship against their will.

The impressment of seamen, however, was vigorously defended in England by writers of the time. James Stephen,

an English barrister, writing in 1805, says: "The worst consequence, perhaps, of the independence and growing commerce of America, is the seduction of our seamen. We hear continually of clamours in that country, on the score of its sailors being pressed at sea by our frigates. But when, and how, have these sailors become Americans?—By engaging in her merchant service during the last and the present war; and sometimes by obtaining that formal naturalization, which is gratuitously given, after they have sailed two years from an American port. If those who by birth, and by residence and employment, prior to 1793, were confessedly British, ought still to be regarded as his Majesty's subjects, a very considerable part of the navigators of American ships, are such at this moment; though, unfortunately, they are not easily distinguishable from genuine American seamen . . . ."

Captain Basil Hall, however, of the British man-of-war *Leander*, which was engaged in searching American vessels for British seamen, near New York, in 1804, was able to appreciate the American side of the controversy. He speaks from experience. "A casual shot from the *Leander*," he says, "hit an unfortunate sloop's main-boom; and the broken spar striking the mate, John Pierce by name, killed him instantly. The sloop sailed on to New York, where the mangled body, raised on a platform, was paraded through the streets, in order to augment the vehement indignation, already at high pitch, against the British.

"Now, let us be candid to our rivals; and ask ourselves whether the Americans would have been worthy of our friendship, or even of our hostility, had they tamely submitted to indignities which, if passed upon ourselves, would have roused not only Liverpool, but the whole country, into a towering passion of nationality?"

The Napoleonic war had not progressed far before its effect upon American commerce was evident. In November, 1804, Jefferson admitted that our vessels were not safe even in our own harbors. The situation gradually became

worse as the war advanced. Great Britain was more aggressive in this respect than France simply because she was more powerful on the sea. After Nelson's famous victory at Trafalgar over the combined French and Spanish fleets, on October 21, 1805, there was no power to question the naval supremacy of Great Britain. Her depredations were then made upon American commerce with impunity, and those of France were different only in degree. In principle, one nation was as much at fault as the other.

In his message of December 3, 1805, Mr. Jefferson summed up the situation as follows: "Since our last meeting the aspect of our foreign relations has considerably changed. Our coasts have been infested, and our harbors watched by private armed vessels, some of them without commissions, some with legal commissions, others with those of legal form, but committing piratical acts beyond the authority of their commissions. They have captured in the very entrance of our harbors, as well as on the high seas, not only the vessels of our friends coming to trade with us, but our own also. They have carried them off under pretence of legal adjudication, but not daring to approach a court of justice, they have plundered & sunk them by the way, or in obscure places, where no evidence could rise against them, maltreating the crews, & abandoning them in boats in the open sea, or on desert shores, without food or covering."

France and Britain vied with each other in issuing orders and decrees against neutral commerce, which meant against the commerce of the United States for the most part. Napoleon made himself emperor in 1804, and soon after inaugurated his famous "continental system," which was intended to cripple the trade of Great Britain. He declared the ports of France, her dependencies and allies, to be closed to British commerce. Since the Napoleonic armies were supreme on the continent of Europe at this time, this sweeping decree practically closed all the continental ports. Then there began a series of retaliatory measures. On

May 16, 1806, the British met the "continental system" with an "order in council" declaring the coast of Europe from Brest to Elbe River, to be in a state of blockade. Although there was no squadron to enforce the order, American vessels starting from our ports and bound for the blockaded district were captured. On the 26th of November following, Napoleon in the Berlin Decree declared a blockade of the British Isles. By orders in council of January 7th and November 11, 1807, Great Britain retaliated by declaring all French ports, as well as those of the colonies and allies of France, to be blockaded, and in December of the same year the Milan Decree made every ship sailing from the ports of Great Britain, or from the ports of her colonies or dependencies, or bound to the ports of Great Britain, or to those of her colonies or dependencies liable to capture.

Captures of American vessels now became more numerous than ever. Even the slight protection afforded by the Jay treaty with Great Britain was withdrawn, as the commercial clauses had expired by limitation in 1806. Of course, no attempt was made to render these blockades actual, as contemplated by international law. It could not have been done were the attempt made. The decrees of Britain were ridiculous, but even more so were the declarations of France extending the blockades not only to the British Isles, but to the colonies and dependencies of Great Britain, and this without an adequate navy. The logic or the justice of the matter did not enter into the consideration. France and Britain were engaged in mortal combat, and the United States had no rights which they were bound to respect. There was danger that she would be ground to death between the upper and the nether millstone. This deplorable situation caused Jefferson to send a special message to Congress on March 17, 1808, in which he said: "These decrees and orders, taken together, want little of amounting to a declaration that every neutral vessel found on the high seas, whatever be her cargo and whatsoever

foreign port be that of her departure or destination, shall be deemed lawful prize; and they prove, more and more, the expediency of retaining our vessels, our seamen, and property, within our own harbors, until the dangers to which they are exposed can be removed or lessened."

In regard to the number of American vessels captured and seamen impressed during these years, no complete and accurate statement can be made. In 1805, one hundred and sixteen American vessels were captured by the British, and it is estimated that about one thousand American seamen were impressed into the British service. In 1807, one hundred and ninety-four American vessels were taken by Britain, and many, in addition, by France. During the nine years between 1803 and 1812, the loss to American commerce was enormous. The British captured nine hundred and seventeen ships, the French five hundred and fifty-eight ships. It is also estimated that upward of three thousand sailors were impressed. Not all of the above captures, however, were illegal. Some of them were made for violations of international law.

These depredations upon the commerce of a neutral nation were just cause for war, but Jefferson preferred a pacific policy. American commerce was prospering in spite of the losses incident to capture; the number of merchant ships was increasing, and the freight rates were high enough to indemnify vessel owners for an occasional loss by capture. New England, of course, suffered most, but was not so warlike as might be expected. Jefferson was intent upon his policy of retrenchment and payment of the national debt, and in this instance decided to continue his policy of non-resistance. He outlined a plan consisting of three parts. In the first place, he wished to make additional provisions for defence. He also wanted to negotiate a new treaty with England, and to adopt a non-importation policy. Jefferson was opposed to the building up of a navy or to the strengthening of the coast fortifications, mainly because of the expense involved. As a substitute for these defences,

he recommended his famous gunboats which have been the cause of much merriment from that day to this. In his message of December 3, 1805, he recommended the construction of a "competent number of gunboats" to protect the coast towns. Between the years 1806 and 1812, one hundred and seventy-six of these boats were built at a cost of \$1,700,000. It seems ridiculous in the extreme to put his "mosquito fleet" composed of boats whose entire armament consisted of a single gun, and whose crews numbered from five to seven men, against that armada which triumphed at Trafalgar. "Every one has heard of," says John T. Morse, Jr., "and nearly every one has laughed at these play-house flotillas, which were to be kept in sheds out of the sun and rain until the enemy should appear, and were then to be carted down to the water and manned by the neighbors, to encounter, perhaps, the fleets and crews which won the fight at Trafalgar, shattered the French navy at the Nile, and battered Copenhagen to ruins. It almost seemed as though the very harmlessness of the craft constituted a recommendation to Jefferson. At least they were very cheap, and he rejoiced to reckon that nearly a dozen of them could be built for a hundred thousand dollars."

Another part of the plan of Jefferson was the negotiation of a new treaty with Great Britain. To this end he nominated James Monroe and William Pinckney, in May, 1806. The two envoys concluded a treaty on December 31st, following, which was deemed so objectionable that Jefferson never sent it to the Senate. It contained no clause against impressment, and the American claim that "free ships make free goods" was not recognized.

The third part of Jefferson's plan was embodied in the Non-Importation Act of April 18, 1806. This act which was to go into effect on the 15th of November following, prohibited the importation of manufactured goods from Great Britain and her colonies. It was suspended on December 29, 1806. Jefferson's pacific policy was a failure, but he dominated Congress so completely that the



legislative branch of the government accepted, almost without question, his various proposals, which so speedily proved ineffectual. His first administration was a successful one, but the second was quite the opposite. The times were not suited to Jefferson's peculiar abilities. As an executive in time of impending or actual hostilities, Jefferson showed to poor advantage. As Governor of Virginia during the Revolutionary War, he was as inefficient as he was during his second presidency.

Although the various outrages to which American commerce was compelled to submit had aroused a spirit of hostility among the people, an event of June 22, 1807, marked the climax. On this date the British frigate *Leopard* fired upon the American frigate *Chesapeake* near Hampton Roads. The American vessel was caught unawares, overpowered, and compelled to surrender. Four seamen, three of whom were Americans, were removed from the *Chesapeake* and impressed into the British service. The whole nation was aroused. Men wore crape in honor of the *Chesapeake's* dead, and cried out for war. "Never," said Jefferson, in a letter to Lafayette, "since the battle of Lexington, have I seen this country in such a state of exasperation as at present." On the 2d of July he issued a proclamation commanding "all armed vessels bearing commissions under the government of Great Britain now within the harbors or waters of the U. S. immediately and without any delay to depart from the same; and interdicting the entrance of all the said harbors & waters to the said armed vessels, & to all others bearing commissions under the authority of the British government." Jefferson displayed unusual activity. He sent a messenger by special vessel to England to demand reparation, and summoned Congress to meet in extraordinary session on October 26th. It seemed that war was at hand. Congress met at the appointed time, but the reply of Great Britain had not been received, as Jefferson had expected. It came in December. Great Britain promised to send a special envoy to America, to adjust the difficulty. Mr. Rose came



“The Ghost of a Dollar or the Bankers Surprise.” From the caricature by W. Charles, in possession of the Historical Society of Pennsylvania.



for this purpose, but hampered by instructions from his government, which was offended by Jefferson's proclamation, he was unable to accomplish anything, and returned home. It was not until November of 1811 that reparation was offered and accepted for the *Chesapeake* outrage.

Upon the failure of these various plans of the President, Jefferson suggested another,—the Embargo,—just as ineffectual and still more suicidal in character. In his message of December 18, 1807, Jefferson called the attention of Congress to the dangers to which our seamen, ships, and merchandise were subjected, and recommended, to obviate this, an "inhibition of the departure of our vessels from the ports of the United States." This recommendation contained the germ of the famous embargo. Congress took the hint and speedily acted upon it. A bill embodying the idea of Jefferson was introduced into the Senate on the same day on which the message had been received. Behind closed doors and under a suspension of the rules, the measure was rushed through all its stages in a single day and passed by the Senate. The House debated it for three days and passed it by a vote of eighty-two to forty-four. Jefferson signed the bill on the 22d of December, 1807,—four days after the reading of his message. It was now illegal for an American ship to leave for a foreign port under any condition; and foreign ships were not allowed to depart, except in ballast, or with a cargo which was on board at the time the act was passed. The language of the law was sweeping and specific. It was enacted "that an embargo be, and hereby is laid on all ships and vessels in the ports and places within the limits or jurisdiction of the United States, cleared or not cleared, bound to any foreign port or place; . . ." It was specified, however, that nothing in the act should "be construed to prevent the departure of any foreign ship or vessel, either in ballast, or with the goods, wares and merchandise on board of such foreign ship or vessel, when notified of this act."

The idea of the embargo was received by Congress with much enthusiasm. Even John Quincy Adams went over to the Republican party, spoke in favor of the measure, and voted for it. The influence of Jefferson is well indicated by the words of Adams. "The President has recommended this measure," said this scion of Federalism, "on his own responsibility. I would not consider, I would not deliberate, I would act. Doubtless the President possesses such further information as will justify the measure." As a matter of fact, Jefferson had no additional information of importance. He hoped, no doubt, as he said, that the act would protect American seamen, ships, and merchandise; but he also hoped that the embargo would inflict such injury upon British merchants and laborers as would result in a pressure upon Parliament to redress American grievances. In both these expectations he was sadly disappointed. The embargo did not protect American ships and seamen, because it was systematically evaded; and in so far as injury to France and Great Britain was concerned, those countries snapped their fingers at it. In the first place, the shipowners did not relish such paternal protection. The carrying business was a lucrative one, and they were quite willing to take the risks involved. Even after additional restrictions were passed, there was systematic evasion. Trade across the Canadian border became brisk, and coasting vessels took liberties with the law. It was enforced, however, to a sufficient extent to work havoc with our trade. The embargo was intended to injure foreign merchants and to cut off food supplies from foreign countries; but, as a matter of fact, it destroyed our export trade and all but ruined the American farmers. The value of the exports dropped in a single year from \$110,000,000 to \$22,000,000. In 1809 the revenue from customs duties had dwindled from \$16,000,000 to \$7,000,000. Shipbuilding had fallen off sixty-six and two-thirds per cent, and wheat, owing to the cutting off of the foreign market, had fallen from \$2 to seventy-five cents per bushel. Tobacco could find no

market at all, and the South, which had voted the embargo, suffered grievously. The trade of the commercial towns of New England was ruined, and the ships were rotting at the wharves, while grass was growing in the streets. In short, the embargo was as great a failure as Jefferson's "amphibious gunboats," and the Republican majority in the House was reduced in 1808 as a consequence.

France and Great Britain received the measure with rail-lery and sarcasm. Lord Castlereagh said that the act was favorable to Great Britain, inasmuch as it crippled American commerce. The attitude of France was even more contemptuous. "The Emperor applauds the embargo," said the French minister for foreign affairs. As a matter of fact, Napoleon even constituted himself a truant officer in the service of the American government to see that the law was enforced. On April 18, 1808, he issued a decree commanding that all American vessels entering ports under French control should be seized, because under the laws of the United States it was no longer legal for an American vessel to navigate the seas.

Jefferson was at last compelled to admit that his pet measure was a failure. In his message of November 8, 1808, he reluctantly admitted that his "candid and liberal experiment" had "failed." He had nothing decisive to offer, however, as a substitute. Many expected war to follow upon the failure of the embargo, but Jefferson practically washed his hands of the whole matter and threw the responsibility of the initiative on Congress. "It will rest," he said, "with the wisdom of Congress to decide on the course best adapted to such a state of things." Four days after his retirement from office he wrote: "Our embargo has worked hard. It has in fact federalized three of the New England states."

The embargo was defended mildly in Congress by Giles, of Virginia. The defence was only half-hearted, however, and largely, no doubt, for the purpose of keeping "regular," as the politicians say nowadays. Giles was one of Jefferson's

faithful henchmen, and "saw a halo around all the acts of the administration." His defence is, then, rather more formal and conventional than sincere. "Mr. President," he said, "I have always understood that there were two objects contemplated by the embargo laws—The first, precautionary, operating upon ourselves—The second, coercive, operating upon the aggressing belligerents. Precautionary, in saving our seamen, our ships and our merchandise from the plunder of our enemies, and avoiding the calamities of war. Coercive, by addressing strong appeals to the interests of both the belligerents. The first object has been answered beyond my most sanguine expectations. . . . It is admitted by all, that the embargo laws have saved this enormous amount of property, and this number of seamen, which without them, would have forcibly gone into the hands of our enemies, to pamper their arrogance, stimulate their injustice, and increase their means of annoyance. . . . It placed these seamen in the bosoms of their friends and families, in a state of perfect security; and if they have since thought proper to abandon these blessings, and emigrate from their country, it was an act of choice, not of necessity. . . . But, Sir, these are not the only good effects of the embargo. It has *preserved our peace—it has saved our honor—it has saved our national independence*. Are these savings not worth notice? Are these blessings not worth preserving? . . . I think . . . Sir, I am warranted in concluding, that if the embargo laws have failed of complete success, their failure has been owing to extraordinary causes which could neither have been foreseen nor anticipated at the time of the adoption of the measure, and therefore cannot furnish any imputation against its policy or wisdom."

The protest of Giles, however, was to no avail. Jefferson admitted the failure of the policy. Madison who was soon to succeed him, was opposed to the embargo laws, and their repeal was no longer in doubt. On February 8, 1809, Mr. Giles offered a resolution in the Senate for the

repeal of the embargo after March 4, 1809, and for prohibiting commercial intercourse with France and Great Britain. A few days later, the resolution was carried. A bill to carry out the intent of the resolution was introduced shortly after and became an act on March 1, 1809. The so-called Non-Intercourse Act of March 1, 1809, served the double purpose of repealing the embargo laws and of cutting off commercial intercourse with France and Great Britain. It provided that "the entrance of the harbors and waters of the United States and of the territories thereof, be, and the same is hereby interdicted to all public ships and vessels belonging to Great Britain or France, excepting vessels only which may be forced in by distress, or which are charged with despatches or business from the government to which they belonged, and also packets having no cargo nor merchandise on board." It was also provided that from and after the 20th of May, 1809, the entrance to the harbors and waters of the United States should be "interdicted to all ships or vessels sailing under the flag of Great Britain or France, or owned in whole or in part by any citizen or subject of either; . . ." The act was to "continue and be in force until the end of the next session of Congress and no longer."

In these closing scenes of his administration, Jefferson took little part. As an outgoing president he was decidedly weak. As Buchanan did later, he thrust aside the responsibility of office two months before his term expired. In January of 1809, he said: "I am now so near retiring that I take no part in affairs beyond the expression of an opinion . . . Five weeks more will relieve me from a drudgery to which I am no longer equal."

Although there were some men in Congress who voted against the repeal of the embargo, the feeling of relief was quite general when the odious statutes were rescinded. Justice Joseph Story, the famous jurist, writing in 1831, makes some interesting comments upon the effects of the embargo. Story was a Jeffersonian and had advocated



the adoption of the embargo policy; but after seeing the fruits of the laws in New England, he devoted himself assiduously to the repeal campaign. "It was during the session of 1808-1809," he writes, "that the embargo, unlimited in duration and extent, was passed, at the instance of Mr. Jefferson, as a retaliatory measure upon England. It prostrated the whole commerce of America, and produced a degree of distress in the New England States greater than that which followed upon the war. I always thought that it was a measure of doubtful policy, but I sustained it, however, with all my little influence for the purpose of giving it a fair experiment. A year passed away, and the evils, which it inflicted upon ourselves, were daily increasing in magnitude and extent; and in the meantime, our navigation being withdrawn from the ocean, Great Britain was enjoying a triumphant monopoly of the commerce of the world. . . . I found that as a measure of retaliation, the system had not only failed, but that Mr. Jefferson from pride of opinion, as well as from that visionary course of speculation, which often misled his judgment, was resolutely bent upon maintaining it at all hazards. He professed a firm belief that Great Britain would abandon her orders in council if we persisted in the embargo; and having no other scheme to offer in case of the failure of this, he maintained in private conversation the indispensable necessity of closing the session of Congress without any attempt to limit the duration of the system. . . . I felt that my duty to my country called on me for a strenuous effort to prevent such calamities. . . . I was unwearied, therefore, in my endeavors to impress the other members of Congress with a sense of our common dangers. . . . In the course of these consultations, I learned the whole policy of Mr. Jefferson; and was surprised as well as grieved to find, that in the face of the clearest proofs, of the failure of the plan, he continued to hope against facts." Although Jefferson was convinced of the failure of his plan he did not want the laws repealed until after the expiration of his term of office.

The final verdict of history upon the embargo policy has been one of unqualified condemnation; but in justice to Mr. Jefferson, it should be said that the evidence against the system in 1807 was by no means conclusive. In fact, embargo found favor in many respectable quarters at that time. Jefferson was not the only public man who was disappointed at the outcome. He was, however, one of the last to admit failure, and to favor a new order of things. This was due in a large measure to Jefferson's conception of his own infallibility. He was modest and retiring in many ways, but had the utmost confidence in his own ability and judgment. He had opinions on every possible subject of human concern and defended them vigorously and with complacency. In the defence of these opinions he never once doubted his own infallibility. This peculiar characteristic explains in a large measure his obstinacy in regard to the embargo and other measures.

One other matter of some importance remains to be noted in connection with foreign affairs. The boundary between Louisiana and Florida yet remained unsettled. The Spaniards took umbrage at the American purchase, and seemed determined for a time to make trouble. In this they were seconded by the French. Owing to the crisis in Europe, Jefferson thought this an opportune time to settle the boundary matter once for all. In a confidential message to Congress, under date of December 6, 1805, he intimated that it would be well to purchase enough territory from the Spaniards to remove all doubt in regard to the boundary. His suggestion was characteristically Jeffersonian. It avoided even the appearance of dictation. After setting forth the desirability of settling the boundary dispute, he continued: "But the course to be pursued will require the command of means which it belongs to Congress exclusively to yield or to deny. . . . To their wisdom then I look for the course I am to take, and will pursue with sincere zest that which they shall approve." This, by the way, was Jefferson's method of managing

Congress. It was a most successful method, too. A suggestion being made, some faithful supporter of the administration introduces a measure to make the suggestion effective. So it was in this case. It was immediately proposed to appropriate a sum of money for the purchase of Florida, as had been done in the case of Louisiana. The proposition is of additional interest because it marks the defection of John Randolph, of Roanoke. Randolph had been the loyal henchman of Jefferson and spokesman for the administration on the floor of the House. The eccentric and brilliant leader was expected to favor any measure endorsed by the President. In this case, however, he came out violently in opposition. He made a most bitter attack upon Jefferson's policies, and even went so far as to question his integrity. The attack came like thunder from a clear sky. Jefferson was surprised, but not seriously disconcerted. There was uneasiness in the Republican ranks, but no stampede. Only eleven of the Republicans voted with Randolph against the administration. The remaining eighty-seven remained loyal to the President, and an appropriation of \$2,000,000 was voted to purchase Florida or a part of it. The consummation of the matter belongs to the history of a later period, as the purchase was not actually made until 1819.

## CHAPTER XX

### *DOMESTIC AFFAIRS*

ALTHOUGH the chief interest in Jefferson's second administration centres in foreign affairs, there are some important domestic events which must be noted. The most dramatic and sensational of these was the so-called conspiracy of Aaron Burr. After Burr's duel with Hamilton his political career seemed at an end. His business affairs were also, at this time, in an unsatisfactory condition. In these straits Burr decided to seek a new field of endeavor. His plan of action—in so far as he had any very definite one—has never been disclosed although it is supposed by some to have involved the conquest of Mexico and the Spanish possessions. To carry out this plan, whatever it may have been, Burr went west in 1805, and was cordially received by General Wilkinson of the United States army, and by Andrew Jackson, then a young lawyer of Nashville, who had sympathy with any man who contemplated the overthrow of Spanish rule. Burr's plans were essentially those of an opportunist. He set forth various schemes involving settlement and conquest, endeavoring to adjust his project to the sentiments of the individual with whom he was conversing.

In December, 1806, Burr got together a party of men at Blennerhassett's Island in Ohio River, and started down stream. Burr's motives were suspected, and unavailing attempts were made by local authorities to check his

progress, and in January, 1807, he appeared in the lower Mississippi with about one hundred men. At this place he learned that his designs had become known to the President, and that Jefferson had issued a proclamation looking to his capture. Upon receipt of this intelligence he left his men, was arrested, and soon after placed on trial at Richmond.

In a proclamation, issued November 27, 1806, the President declared that "sundry persons" were preparing "a military expedition or enterprise against the dominions of Spain," and were "deceiving and seducing honest and well-meaning citizens, under various pretences, to engage in their criminal enterprises." He therefore warned "all faithful citizens . . . to withdraw from the same without delay," and commanded "all persons whatsoever, engaged or concerned in the same to cease all further proceedings therein as they will answer the contrary at their peril, and incur prosecution with all the rigors of law." He called upon all officers of the law and "all good and faithful citizens" to do their utmost to bring "to condign punishment all persons, engaged or concerned in such enterprise . . ."

On December 5th, following, Jefferson wrote to Cæsar A. Rodney: "The designs of our Catiline are as real as they are romantic, but the parallel he has selected from history for the model of his own course, corresponds but by halves. It is true in its principal character, but the materials to be employed are totally different from the scourings of Rome. I am confident that he will be completely deserted on the appearance of the proclamation, because his strength was to consist of people who had been persuaded that the government connived at the enterprise." On the 20th of December, 1806, Jefferson directed a letter in regard to the conspiracy to William Charles Cole Claiborne, Governor of Louisiana. In speaking of the purpose of Burr, he said: "His object is to take possession of New Orleans, as a station from whence to make an expedition against Vera Cruz and Mexico. . . . He has been able to decoy a great proportion of his people by making them believe the

government secretly approves of this expedition against the Spanish Territories." On the 11th of January, 1807, Jefferson wrote an extraordinary letter to Rev. Charles Clay in which he stated that Burr's project included a detachment of the western territory from the Union. "Burr's enterprise," said he, "is the most extraordinary since the days of Don Quixote. It is so extravagant that those who know his understanding would not believe it, if the proofs admitted doubt. He has meant to place himself on the throne of Montezuma, and extend his empire to the Alleghanies, seizing on New Orleans as the instrument of compulsion for our Western States." It should be said, however, that Jefferson's knowledge of the conspiracy was neither complete nor accurate. Much of his information was received through General Wilkinson of the United States army, an unscrupulous, traitorous, and mendacious man who had betrayed the small confidence Burr had reposed in him, and added lies to give his confessions importance.

In a letter of April 20, 1807, to Senator William B. Giles, of Virginia, Jefferson complained of the strictures passed by the Federalists upon his course, relative to Burr. "The first ground of complaint," he writes, "was the supine inattention of the administration to a treason stalking through the land in open day. The present one, that they have crushed it before it was ripe for execution, so that no overt acts can be produced." Jefferson's opinion of Burr is interesting in this connection. In this same letter to Giles, he says: "Against Burr, personally, I never had one hostile sentiment. I never indeed thought him an honest, frank-dealing man, but considered him as a crooked gun, or other perverted machine, whose aim or stroke you could never be sure of." In the spring of 1807, rumors that Burr was intriguing with foreign nations to further his schemes came to the ears of the President. On May 1st, he wrote to Madison from Monticello: "The proposition for separating the western country, mentioned by Armstrong to have been made at Paris, is important. But what is the

declaration he speaks of? . . . I wish our Ministers at Paris, London, and Madrid, could find out Burr's propositions and agents there." On May 26, 1807, after Burr's small force had been dissipated, Jefferson referred to the expedition in a letter to Lafayette. "I very much wished your presence there [at New Orleans]," he said, "during the late conspiracy of Burr. The native inhabitants were unshaken in their fidelity. But there was a small band of American adventurers who had fled from their debts, and who were longing to dip their hands into the mines of Mexico, enlisted in Burr's double project of attacking that country and severing our union. . . . It is certain that he never had one hundred men engaged in his enterprise, and most of these were made to believe the government patronized it." In a letter of July 14, 1807, he said to M. Dupont de Nemours: "Burr's conspiracy has been one of the most flagitious of which history will ever furnish an example. He had combined the objects of separating the Western States from us, of adding Mexico to them, and of placing himself at their head."

In regard to the intrigues of Burr with foreign powers, there is evidence that he attempted to enlist Great Britain, at least, in his schemes. Anthony Merry, the British Minister at Washington at the time, was intimate with Burr, but hostile toward Jefferson. Shortly after the duel with Hamilton, Williamson, an Englishman and a friend of Burr's, carried a very startling proposition from Burr to Merry, which the latter in turn forwarded to his home government. Merry's letter, written August 6, 1804, runs as follows: "I have just received an offer from Mr. Burr, the actual Vice-president of the United States (which position he is about to resign) to lend his assistance to his Majesty's government in any manner in which they may think fit to employ him, particularly in endeavoring to effect a separation of the western part of the United States from that which lies between the Atlantic and the mountains, in its whole extent. His proposition on this and other subjects

will be fully detailed to your Lordship [Harrowby] by Colonel Williamson, who has been the bearer of them to me, and who will embark for England in a few days. It is therefore only necessary for me to add that if after what is generally known of the profligacy of Mr. Burr's character, his Majesty's minister should think proper to listen to his offer, his present situation in this country, where he is now cast off, as much by the democratic as by the Federal party, and where he still preserves connections with some people of influence, added to his great ambition and spirit of revenge against the present administration, may possibly induce him to exert the talents and activity which he possesses with fidelity to his employers." Jefferson was slow to believe that Burr would receive any aid from European powers. In a special message to Congress, under date of January 22, 1807, submitted in response to a resolution introduced by John Randolph, asking the President for information in regard to the Burr expedition, Jefferson said: "Surmises have been hazarded that this enterprise is to receive aid from certain foreign Powers. But these surmises are without proof or probability." They are "to be imputed to the vauntings of the author of this enterprise to multiply his partisans by magnifying the belief of his prospects and support."

Burr's examination began on the 22d of May, 1807, and in August his trial for treason was opened in the United States District Court of Richmond, with Chief Justice John Marshall presiding. The trial was a memorable one, and the array of legal talent was imposing, particularly on the side of the defendant. Edmund Randolph and John Wickham, both of Virginia, and Luther Martin, of Maryland, appeared for Burr, while George Hay, United States District Attorney, with some assistance, conducted the prosecution. The sympathy of the Federalists was on the side of Burr. They forgot that he had killed their most brilliant leader, and looked upon him as a martyr to the vindictiveness of Jefferson. The President gave assistance and offered suggestions



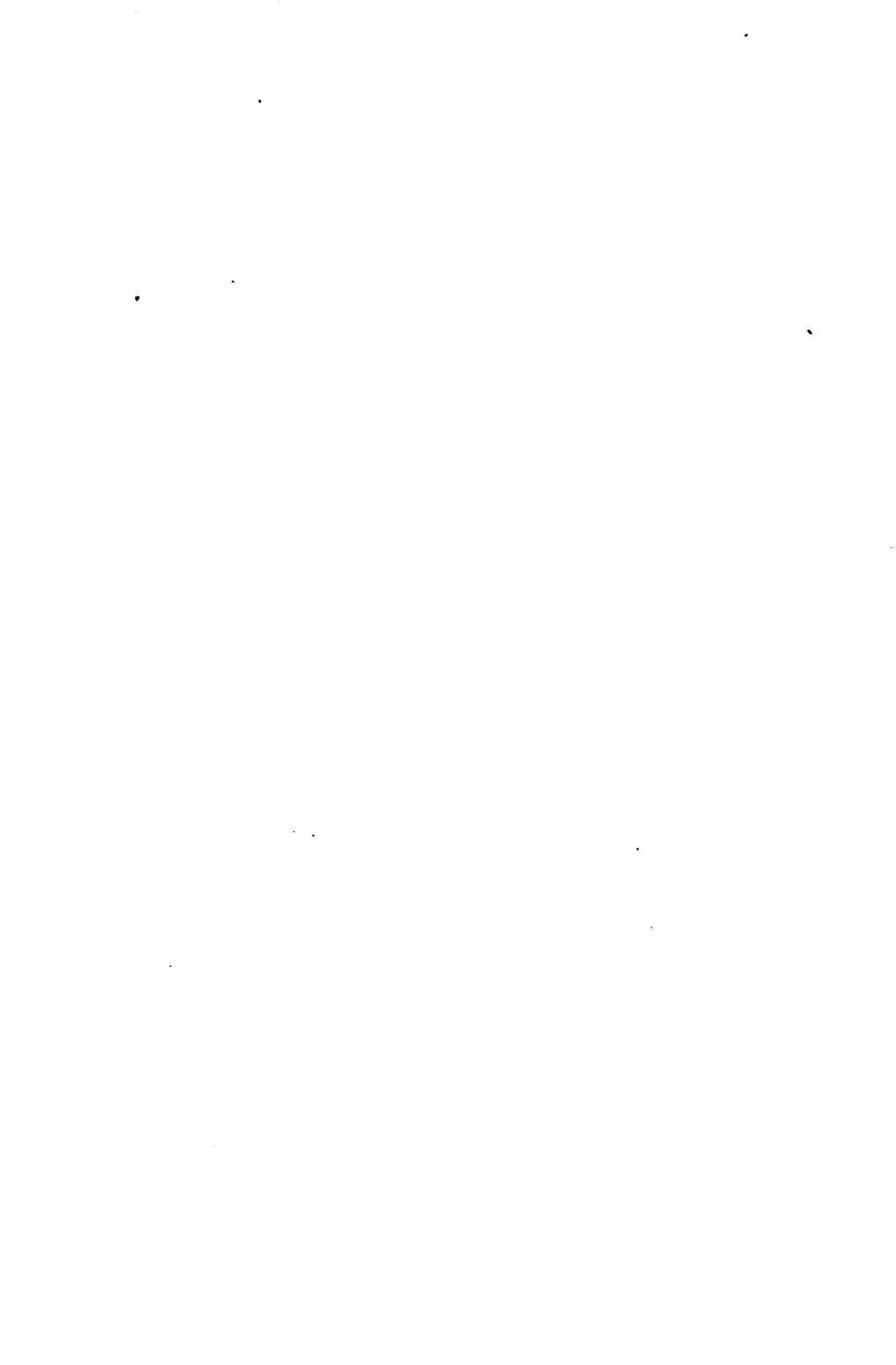
to Mr. Hay in regard to the conduct of the case, but did not go further than any president should have done who had taken an oath to uphold the Constitution and the laws of the United States. Nevertheless, attempts were made to drag him into the case. Luther Martin, was particularly severe in his condemnation of Jefferson. He charged the President in open court with attempting to destroy "the life and property of an innocent man" by "tyrannical orders" contrary to the laws and the Constitution. "The President has undertaken," he said, "to prejudice my client by declaring that 'of his guilt there can be no doubt.' He has assumed the knowledge of the Supreme Being himself, and pretended to search the heart of my highly respected friend. He has proclaimed him a traitor in the face of that country which has rewarded him. He has let slip the dogs of war, the hell-hounds of persecution, to hunt down my friend."

The attorneys for the defence attempted to compel Jefferson to appear as a witness and to bring with him the official records and letters bearing on the case. Justice Marshall granted the request for the subpoena but admitted that the court had no authority to enforce it. "The Federalist rather than the judge spoke on this occasion." Jefferson was greatly annoyed by Marshall's decision, and declined to appear. On June 20, 1807, he wrote to Attorney Hay in defence of his conduct: "The leading principle of our Constitution is the independence of the Legislature, executive and judiciary, of each other, and none are more jealous of this than the judiciary. But would the executive be independent of the judiciary, if he were subject to the *commands* of the latter, and to imprisonment for disobedience; if the several courts could bandy him from pillar to post, keep him constantly trudging from north to south and east and west, and withdraw him entirely from his constitutional duties." In the progress of the case it was soon evident that the prosecution was conducting a losing fight. Burr's attorneys were the more skilful; the evidence for the

prosecution was inconclusive and the State found it impossible to prove by two witnesses the "overt act" specified in the Constitution's definition of treason. The Court declared the evidence insufficient to convict, and the jury brought in a verdict of "not guilty." Jefferson was greatly incensed at the verdict. The trial came to an end on the 1st of September, and on the 20th he expressed himself emphatically in a letter to General Wilkinson. "The scenes which have been acted at Richmond," he said, "are such as have never before been exhibited in any country where all regard to public character has not yet been thrown off. They are equivalent to a proclamation of impunity to every traitorous combination which may be formed to destroy the Union." But he was not content to let the matter rest there, and in his message of October 27, he made the following pointed reference to the trial: "I informed Congress at their last session of the enterprises against the public peace which were believed to be in preparation by Aaron Burr and his associates, of the measures taken to defeat them, & to bring the offenders to justice. Their enterprises have been happily defeated, by the patriotic exertions of the militia, wherever called into action, by the fidelity of the army, and energy of the Commander-in-Chief in promptly arranging the difficulties presenting themselves on the Sabine, preparing to meet those arising on the Mississippi, and dissipating before their explosion, plots engendered there. I shall consider it my duty to lay before you the proceedings, and the evidence publicly exhibited on the arraignment of the principal offenders before the District Court of Virginia, together with some evidence not then heard." Then comes the significant part: "From the whole you will be enabled to judge whether the defect was in the testimony, in the law, or in the administration of the law; and wherever it shall be found, the legislature alone can apply or originate the remedy. The framers of our Constitution certainly supposed they had guarded, as well their government against destruction by treason, as their citizens against oppression

under pretence of it; and if these ends are not obtained, it is of importance to enquire by what means, more effectual, they may be secured."

The most considerable study yet made of this movement is *The Aaron Burr Conspiracy*, by Dr. W. F. McCaleb, published in 1903. The conclusions of Dr. McCaleb differ quite widely from those arrived at by Henry Adams and others. He says that "the conspiracy was of much wider and deeper origin than has been usually supposed." He maintains that the disclosure of his designs to Ministers Merry and Yrujo, of England and Spain, respectively, was "a consummate piece of imposture" on the part of Burr, and argues strenuously that Burr had it in mind to make a conquest of the Spanish possessions, but had no idea of detaching the West from the Union. On the whole Dr. McCaleb makes out Burr to be less culpable than does the orthodox and traditional view. As a matter of fact it is exceedingly difficult, if not absolutely impossible, to determine precisely what Burr's designs were. It is very probable that Burr himself did not have any very definite conception in mind. No doubt his course was to be determined largely by future contingencies. Certainly Burr's own words give no reliable clew to his purposes. He was "all things to all men." As John R. Green says of Queen Elizabeth, as a liar he was "superb and picturesque." He proposed various things at various times. To one man he spoke of a conquest of Florida; to another of the annexation of Texas and Mexico to the United States; to another of the secession of the West from the Union; to another of the capture of New Orleans; and to another of settlement and land speculation. No doubt there was a great deal of "consummate imposture" in all this, but it is exceedingly difficult to determine where imposture leaves off and seriousness and sincerity begin. In regard to Dr. McCaleb's book, however, it is not too much to say that he has raised a reasonable doubt respecting many of the conclusions of Henry Adams and others.



Mount Vernon 13<sup>th</sup> Dec<sup>r</sup> 1799

M<sup>r</sup> Anderson,

I did not know that you were  
here yesterday morning until I had mounted  
my horse, otherwise I should have given you  
what I now send.

As M<sup>r</sup> Rawlins was going to the  
Union Farm, to lay off the Clover lots, I sent  
by him the Duplicate for that Farm to his brother  
— and as I was going to River Farm myself, I  
carried a copy for that Farm to Dondal —  
Both of them have been directed to consider  
them attentively, & to be prepared to give you  
their ideas of the mode of arranging the  
work when they are called upon. —

Such a Pen as I saw yesterday at  
Union Farm, would, if the Cattle were kept  
in it one Week, destroy the whole of them.  
— They would be infinitely more comfortable  
in this, or any other weather, in the open  
field. — Logue run Farm Pen may be in  
same condition — It did not occur to  
pass through the yard of the Pen  
into it — I am Your friend &c

M<sup>r</sup> J. Anderson

G. Washington

A few other points yet remain to be noticed. It is pleasing to note that the faith tacitly pledged by the Constitutional Convention in 1787 was kept by Congress in 1807. It was provided in the Constitution that the migration or importation of slaves should not be prohibited by Congress prior to the year 1808. In his message of December 2, 1806, Mr. Jefferson recommended that the importation of slaves be prohibited. A bill looking to that end was promptly introduced, passed, and was approved on March 2, 1807. It went into effect on January 1, 1808,—the earliest possible date admissible under the Constitution. The act provided that it should “not be lawful to import or bring into the United States or the territories thereof, from any foreign kingdom, place, or country, any negro, mulatto, or person of colour, with intent to hold, sell, or dispose of such negro, mulatto, or person of colour, as a slave, or to be held to service or labour.”

The expedition of Lewis and Clarke to the northwest was a notable piece of pioneer work. Under the patronage of Jefferson and Gallatin they explored the northern part of the Louisiana territory, and thus encouraged migration and settlement. In his message to Congress of December 2, 1806, Jefferson speaks appreciatively of the services of these two men. “The expedition of Messrs. Lewis and Clarke, for exploring the river Missouri, and the best connection from that to the Pacific ocean,” he said, “has had all the success which could have been expected. They have traced the Missouri nearly to its source, descended the Columbia to the Pacific ocean, ascertained with accuracy the geography of that interesting communication across our continent, learned the character of the country, of its commerce, and inhabitants; and it is but justice to say that Messrs. Lewis and Clarke, and their brave companions, have by this arduous service deserved well of their country.”

Since the matter of internal improvements early became an important one, constitutionally and commercially, a word concerning Jefferson's attitude may not be amiss at this time.

Judging from his States Rights and strict constructionist views, we should expect Jefferson to be unalterably opposed to the appropriation of money on the part of the central government for internal improvements. But in his message of November 8, 1808, he says: "The probable accumulation of the surplus of revenue beyond what can be applied to the payment of the public debt, whenever the freedom and safety of our commerce shall be restored, merits the consideration of Congress. Shall it lie unproductive in the public vaults? Shall the revenue be reduced? Or shall it be appropriated to the improvements of roads, canals, rivers, education, and other great foundations of prosperity and union, under the powers which Congress may already possess, or such amendment of the Constitution as may be approved by the States? While uncertain of the course of things, the time may be advantageously employed in obtaining the powers necessary for a system of improvement, should that be thought best." These would have been remarkable words to come from the pen of Jefferson in 1801, but in 1808 they cause less surprise. The hard knocks of actual administration had somewhat modified Jefferson's theoretical views. He saw the advantages, even the necessities, of a strong central government and a liberal interpretation of the powers of Congress. He was now taking an inside rather than an outside view. He was the leader of the government and not of the opposition. His administration of the government was not in accord with his frequently expressed principles. He did not live up to his ante-election promises, and for this John Randolph took him sharply to task. The censure was really not merited, however, as the departure of Jefferson from his theoretical views was found to be unavoidable. Adherence to his former constitutional views had been found to be impracticable, and Jefferson deserves praise rather than blame for his courageous action.

The internal improvements made in Jefferson's presidency, however, were not considerable. The Cumberland

Road was built in 1806, from Cumberland, Maryland, into Ohio, in order to make the western lands accessible to settlers. The demand for such improvements, however, was not yet strong, and the Republicans were not entirely reconciled to the project, although local interests induced many of them to advocate the expenditure of national revenue for this purpose. In the subsequent administrations the matter became more important, and were it not for the appearance of the railroad, about 1830, internal improvements would have played a much larger part in American political affairs.

Jefferson's undoubted leadership and power of conciliation are evident in his relations to his Cabinet. His advisory body remained quite constant and thoroughly loyal during the entire eight years. Madison and Gallatin, the mainstays of the Cabinet, remained in office during the two administrations. Jefferson's old friend, John Breckenridge, became attorney-general, and after his death in 1807, Cæsar A. Rodney succeeded to the post. About the middle of Jefferson's second term of presidential office a third term was suggested, but Jefferson scouted the idea. He might in all probability have been elected for the third term, notwithstanding the precedent set by Washington, but he was sixty-five years of age, had been in the public service for forty years, and furthermore believed in the democratic theory of rotation in office. Jefferson expresses himself clearly upon this point in his correspondence. As early as January 6, 1805, he wrote in a letter to John Taylor: "My opinion originally was that the President of the United States should have been elected for seven years, and forever ineligible afterwards. I have since become sensible that seven years is too long to be irremovable, and that there should be a peaceable way of withdrawing a man in midway who is doing wrong. The service for eight years with a power to remove at the end of the first four, comes nearly to my principle as corrected by experience. And it is in adherence to that that I determined to withdraw at the end of my



second term. The danger is that the indulgence and attachments of the people will keep a man in the chair after he becomes a dotard, that reflection through life shall become habitual, and election for life follow that. General Washington set the example of voluntary retirement after eight years. I shall follow it, and a few more precedents will oppose the obstacle of habit to any one after a while who shall endeavor to extend his term." In the same letter, however, he remarks significantly: "There is, however, but one circumstance which could engage my acquiescence in another election, to wit, such a division about a successor as might bring in a Monarchist." It is conceivable that had Alexander Hamilton been still living, Jefferson would have brushed aside his scruples and consented to a life term of office in order to prevent the election of his detested rival. In the present instance, however, there was no need for such vicarious sacrifice, as Madison was the heir apparent. About the middle of the second administration, Jefferson wrote to Lafayette: "I am panting for retirement, but am as yet nearly two years from that goal. The general solicitations I have received to continue another term, give me great consolation, but considerations public as well as personal, determine me inflexibly on that measure."

Madison was the leading candidate for the Republican nomination in 1808, although James Monroe was favored by some. On January 21, 1808, two caucuses of the Virginia legislature were held. One—the more numerous attended—nominated Madison, and the other, Monroe. A congressional caucus, which met in the Senate chamber on January 23, 1808, gave Madison eighty-three votes, Clinton three, and Monroe three. Governor Clinton, of New York, was favored by many northern Republicans, but the "Virginia dynasty" was too strong for him. Monroe, too, was an avowed candidate, but Jefferson decided that he should wait. Clinton was nominated almost unanimously for the vice-presidency. The campaign did not arouse any great interest. Although Jefferson's fatal embargo policy had

strengthened the Federalists, they really had no prospect of success. Massachusetts, New Hampshire, Rhode Island, Connecticut, and Delaware were carried by the Federalists and the votes of New York, Maryland, and North Carolina were divided. For the presidency Madison received one hundred and twenty-two votes; C. C. Pinckney, the Federalist candidate, received forty-seven; and George Clinton, the favorite son of New York, received six votes from his own State. For the vice-presidency, Governor Clinton received one hundred and thirteen votes, while Rufus King, the candidate of the Federalists, received forty-seven.

On the 4th of March, 1809, Thomas Jefferson relinquished the reins of government to that "constructive statesman," James Madison, who for eight years had been his governmental understudy and faithful political ally, and, soon after, he retired to spend the remainder of his days in the philosophic shades of his beloved Monticello.

Having traced the steps in the formation and development of the Constitution in some detail, it may be well, before bringing the volume to a close, to take a brief review of the period and to emphasize its most salient features.

The Articles of Confederation, as a form of government, proved to be organically weak. The central government had no coercive power. Congress was an advisory rather than a mandatory body. It could make requisitions for revenue, but could not compel the States to pay it. It could make treaties, but could give no guarantee that the States would respect them. The regulation of commerce was practically in the hands of the individual States. The consent of nine States was necessary for the success of any important measure, and the instrument could be amended only by the unanimous consent of the thirteen commonwealths. The most fundamental defect of the Articles lay in the fact that under them the government operated upon the States and not upon individuals. An individual may be coerced, but a State cannot be; and a government without coercive power is unworthy of the name.

There was no judiciary department under the Articles, and the President of Congress had none of those powers which make our national executive an effective officer.

In short, it may be said that the general impotency of the form of government was one of the most important causes of the confusion and disorder which obtained during the "critical period."

Washington, Madison, Hamilton, and a few other far-sighted statesmen appreciated the gravity of the situation and succeeded in having a convention called for the revision of the form of government. This convention met in Philadelphia in the summer of 1787 and formulated the Constitution under which we are now living.

In the Constitutional Convention there was a clash between the advocates of a strong central government and those who favored a loose confederation. On this point, the large States were arrayed against the small ones. The most important difference of opinion was in regard to representation. The small States insisted upon equal representation in both houses of Congress, while the large ones demanded proportional representation in both branches. The Connecticut Compromise adjusted the difficulty by making a judicious combination of the two principles.

The second great compromise of the Constitution had to do with representation and direct taxation, while the third involved the slave trade and the regulation of commerce. Throughout the deliberations of the Convention, the interests of the South were opposed, in a measure, to those of New England, but the sound sense and good judgment of General Charles Cotesworth Pinckney did much toward breaking down sectional lines.

In September, 1787, the Constitution in its finished form was submitted to the people of the various States for ratification. Numerous objections were urged against it. It was held that the absence of a Bill of Rights endangered the liberties of the people; that the new form would be too expensive to operate; that it would destroy the State

governments; that the liberty of the press was not provided for; that trial by jury in civil cases was not assured; that the Federal Courts would destroy those of the States; that there was no provision against a standing army; that the limits of the powers of the general government were not clearly defined; that no provision was made for religious toleration; that the billeting of soldiers upon the people was not prohibited; that annual elections and rotation in office had been abolished; that the number of Representatives was too small; that the Senate was aristocratic; that the Supreme Court had too much power; that the powers of the Executive were too extensive; that the sovereignty of the States had been destroyed; and that the new form was based upon individuals instead of upon States.

These and other objections were urged in the ratifying conventions. The adoption of the Constitution was strongly advocated by Washington, Madison, Hamilton, Randolph, Wilson, and others, while Patrick Henry, Governor Clinton, and Richard Henry Lee led the opposition. The most vigorous contests were in the conventions of New York, Virginia, Massachusetts, and Pennsylvania. New Hampshire was the ninth State to ratify, and provisions were made in September, 1788, looking to the inauguration of the new form of government.

On April 30, 1789, Washington was installed in office as the first president of the United States, and the machinery of the new government was set in motion under the auspices of the Federalist party.

Party lines were not strictly drawn at the opening of the national period, but after the lapse of a few years the Federalists under Hamilton, John Adams, and others were opposed to the Republicans under Jefferson and his friends. The Federalists were inclined to be aristocratic, while the Republicans were democratic; the Federalists advocated a liberal construction of the Constitution, while the Republicans insisted upon a literal interpretation; the Federalists were partial to England and the Republicans to France;

the Federalists would place the governmental power, for the most part, in the hands of the "well-born," while the Republicans had great faith in the wisdom of the masses. The personal hostility which arose between Hamilton and Jefferson further alienated the two parties.

The Federalists were in control of the government from 1789 to 1801, at which time the Republicans assumed control and remained in office until the triumph of the Whigs in 1840. This volume, however, closes with the end of Jefferson's administration in 1809. It covers the period of the formation and early development of the Constitution. This period witnessed the downfall of the Articles of Confederation and the establishment of "a more perfect Union"; it witnessed the inauguration of the new form of government under the "one indispensable man"; it comprises the whole era of Federal control and witnessed the triumph of Republican principles. In 1809 the working of the Constitution was fairly well settled. It had been operated under both Federal and Republican auspices, and Chief Justice John Marshall was well started upon his illustrious career of interpretation. Taken as a whole the period must rank as the most important formative period in the history of the American Republic.

## APPENDIX I

### *ARTICLES OF CONFEDERATION AND PERPETUAL UNION, BETWEEN THE STATES OF*

New Hampshire,  
Massachusetts Bay,  
Rhode Island and Providence  
Plantations,  
Connecticut,  
New York,  
New Jersey,

Pennsylvania,  
Delaware,  
Maryland,  
Virginia,  
North Carolina,  
South Carolina, and  
Georgia.

#### ARTICLE I.

The style of this confederacy shall be, THE UNITED STATES OF AMERICA.

#### ARTICLE II.

Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States in Congress assembled.

#### ARTICLE III.

The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare; binding themselves to assist each other against

all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

#### ARTICLE IV.

The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state; and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively; provided, that such restrictions shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the owner is an inhabitant; provided also, that no imposition, duties or restriction shall be laid by any state, on the property of the United States, or either of them.

If any person guilty of or charged with treason, felony, or other high misdemeanor, in any state, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

#### ARTICLE V.

For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each

state to recall its delegates, or any of them, at any time within the year, and send others in their stead for the remainder of the year.

No state shall be represented in Congress, by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states.

In determining questions in the United States in Congress assembled, each state shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonment, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

#### ARTICLE VI.

No state, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in Congress assembled,



specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties which may interfere with any stipulations in treaties entered into, by the United States in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up, in time of peace, by any state, except such number only as shall be deemed necessary, by the United States in Congress assembled, for the defence of such state, or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only as in the judgment of the United States in Congress assembled shall be deemed requisite to garrison the forts necessary for the defence of such state: but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred; and shall provide and constantly have ready for use, in publick stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No state shall engage in any war, without the consent of the United States in Congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted: nor shall any state grant commissions to any ship or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled; and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled; unless such state be infested by pirates, in which vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

## ARTICLE VII.

When land forces are raised by any state for the common defence, all officers of or under the rank of colonel, shall be appointed by the legislature of each state respectively by whom such forces shall be raised, or in such manner as such state shall direct; and all vacancies shall be filled up by the state which first made the appointment.

## ARTICLE VIII.

All charges of war, and all other expenses that shall be incurred for the common defence, or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the value of all land within each state, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in Congress assembled shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States in Congress assembled.

## ARTICLE IX.

The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article: Of sending and receiving ambassadors: Entering into treaties and alliances; provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatever: Of establishing rules for deciding in all cases what captures on land or water shall be legal; and in what manner prizes taken by land or naval

forces in the service of the United States shall be divided or appropriated: Of granting letters of marque and reprisal in times of peace: Appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of captures; provided, that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort, on appeal, in all disputes and differences now subsisting, or that hereafter may arise, between two or more states concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following:—Whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other state in controversy; and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States; and from the list of such persons, each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number, not less than seven nor more than nine names, as Congress shall direct, shall in the presence of Congress be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause, shall agree in the determination. And if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out

of each state; and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed in the manner before prescribed shall be final and conclusive. And if any of the parties shall refuse to submit to the authority of such court, or to appear, or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive; the judgment, or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: Provided, that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superiour court of the state where the cause shall be tried, "Well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection, or hope of reward:" Provided also, that no state shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions as they may respect such lands and the states which passed such grants are adjusted, the said grants, or either of them, being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states: Fixing the standard of weights and measures throughout the United States: Regulating the trade and managing all affairs with the Indians, not members of any of the states; provided that the legislative right of any state within its own limits be not

infringed or violated: Establishing and regulating postoffices from one state to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office: Appointing all officers of the land forces in the service of the United States, excepting regimental officers: Appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States: Making rules for the government and regulation of the land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee to sit in the recess of Congress, to be denominated A COMMITTEE OF THE STATES, and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction: To appoint one of their number to preside; provided, that no person be allowed to serve in the office of President more than one year in any term of three years: To ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the publick expenses: To borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted: To build and equip a navy: To agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state, which requisition shall be binding; and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm and equip them, in a soldierlike manner, at the expense of the United States; and the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any

state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than its quota thereof, such extra number shall be raised, officered, clothed, armed and equipped, in the same manner as the quota of such state; unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same; in which case they shall raise, officer, clothe, arm and equip as many of such extra number as they judge can be safely spared: and the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war; nor grant letters of marque and reprisal in time of peace; nor enter into any treaties or alliances; nor coin money; nor regulate the value thereof; nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them; nor emit bills; nor borrow money on the credit of the United States; nor appropriate money; nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised; nor appoint a commander in chief of the army or navy—unless nine states assent to the same: nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months; and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request, shall be furnished with a transcript

of the said journal, except such parts as are above excepted, to lay before the legislature of the several states.

#### ARTICLE X.

The committee of the states, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine states, shall, from time to time, think expedient to vest them with; provided, that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the Congress of the United States assembled is requisite.

#### ARTICLE XI.

Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into and entitled to all the advantages of this union. But no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

#### ARTICLE XII.

All bills of credit emitted, moneys borrowed, and debts contracted, by or under the authority of Congress, before the assembling of the United States in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the publick faith are hereby solemnly pledged.

#### ARTICLE XIII.

Every state shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every state; and the union shall be perpetual. Nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress

of the United States, and be afterwards confirmed by the legislatures of every state.

And whereas it hath pleased the great Governour of the world to incline the hearts of the legislatures we respectively represent in Congress to approve of, and to authorize us to ratify the said articles of confederation and perpetual union:

KNOW YE, That we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions which by the said confederation are submitted to them; and that the articles thereof shall be inviolably observed by the states we respectively represent; and that the union shall be perpetual.

In witness whereof, we have hereunto set our hands in Congress.

Done at Philadelphia, in the state of Pennsylvania, the ninth day of July, in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

Josiah Bartlett,  
John Wentworth,  
August 8, 1778.

} On the part and behalf of  
the state of New Hampshire.

John Hancock,  
Samuel Adams,  
Elbridge Gerry,  
Francis Dana,  
James Lovell,  
Samuel Holten,

} On the part and behalf of  
the state of Massachusetts Bay.



William Ellery,  
Henry Marchant,  
John Collins,

} On the part and behalf of the  
state of Rhode Island and  
Providence Plantations.

Roger Sherman,  
Samuel Huntington,  
Oliver Wolcott,  
Titus Hosmer,  
Andrew Adams,

} On the part and behalf of  
the state of Connecticut.

James Duane,  
Francis Lewis,  
William Duer,  
Gouverneur Morris,

} On the part and behalf of  
the state of New York.

John Witherspoon,  
Nathaniel Scudder,

} On the part and behalf of  
the state of New Jersey.  
November 26, 1778.

Robert Morris,  
Daniel Roberdeau,  
Jonathan Bayard Smith,  
William Clingan,  
Joseph Reed,

} On the part and behalf of  
the state of Pennsylvania.  
July 22, 1778.

Thomas M<sup>c</sup>Kean,  
February 22, 1779.  
John Dickinson,  
May 5, 1779.  
Nicholas Van Dyke,

} On the part and behalf of  
the state of Delaware.

John Hanson,  
Daniel Carroll,

} On the part and behalf of  
the state of Maryland.  
March 1, 1781.

Richard Henry Lee,  
John Banister,  
Thomas Adams,  
John Harvie,  
Francis Lightfoot Lee,

} On the part and behalf of  
the state of Virginia.

John Penn, July 21, 1778. Cornelius Harnett, Thomas Williams,	}	On the part and behalf of the state of North Caro- lina.
Henry Laurens, William Henry Drayton, John Matthews, Richard Hutson, Thomas Heyward, jr.	}	On the part and behalf of the state of South Caro- lina.
John Walton, July 24, 1778. Edward Telfair, Edward Langworthy,	}	On the part and behalf of the state of Georgia.



## APPENDIX II

### THE CONSTITUTION OF THE UNITED STATES

*We the People of the United States, in order to form a more perfect Union, establish Justice, ensure Domestic Tranquillity, provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.*

#### ARTICLE I.

Sec. 1. ALL legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Sec. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of 25 years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years,

and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every 30,000, but each state shall have at least one representative; and until such enumeration shall be made, the state of New-Hampshire shall be entitled to choose three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New-Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North-Carolina five, South-Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of 30 years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice-president of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: And no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Sec. 4. The times, places and manner of holding elections, for senators and representatives, shall be prescribed in each state by the legislature thereof: But the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sec. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Sec. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

Sec. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be

sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days, (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Sec. 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States:

To borrow money on the credit of the United States:

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

To provide for the punishment of counterfeiting the securities and current coin of the United States:

To establish post-offices and post-roads:



To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries:

To constitute tribunals inferior to the supreme court:

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years:

To provide and maintain a navy:

To make rules for the government and regulation of the land and naval forces:

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions:

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: And,

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Sec. 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808,

but a tax or duty may be imposed on such importation, not exceeding 10 dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation, or other direct tax shall be laid unless in proportion to the *census* or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince or foreign state.

Sec. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and controul of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

#### ARTICLE II.

Sec. 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list, the said House shall, in like manner, choose the president. But in choosing

the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the vice-president.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained to the age of 35 years, and been 14 years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect and defend the constitution of the United States."

Sec. 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may by law vest the appointment of such inferior officers, as they think proper in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

Sec. 3. He shall, from time to time, give to the Congress information of the state of the union, and recommend to their consideration, such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Sec. 4. The president, vice-president, and all civil officers of the United States shall be removed from office on

impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

## ARTICLE III.

Sec. 1. The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Sec. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party: to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state, claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before-mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Sec. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their

enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

#### ARTICLE IV.

Sec. 1. Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Sec. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.

Sec. 3. New states may be admitted by the Congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Sec. 4. The United States shall guarantee to every state in this union, a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

## ARTICLE V.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year 1808, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

## ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to



support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

## ARTICLE VII.

The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

DONE in convention, by the unanimous consent of the states present, the 17th day of September, in the year of our Lord 1787, and of the independence of the United States of America the 12th. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON, *President,*  
*And Deputy from Virginia.*

<i>New-Hampshire,</i>	{	John Langdon, Nicholas Gilman.
<i>Massachusetts,</i>	{	Nathaniel Gorham, Rufus King.
<i>Connecticut,</i>	{	William Samuel Johnson, Roger Sherman.
<i>New-York,</i>	{	Alexander Hamilton.
<i>New-Jersey,</i>	{	William Livingston, David Brearly, William Patterson, Jonathan Dayton.
<i>Pennsylvania,</i>	{	Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, Jared Ingersoll, James Wilson, Gouverneur Morris.

<i>Delaware,</i>	{	George Read, Gunning Bedford, jun., John Dickinson, Richard Bassett, Jacob Broom.
<i>Maryland,</i>	{	James M'Henry, Daniel of St. Thomas Jenifer, Daniel Carroll.
<i>Virginia,</i>	{	John Blair, James Madison, jun.
<i>North-Carolina,</i>	{	William Blount, Richard Dodds Spaight, Hugh Williamson.
<i>South-Carolina,</i>	{	John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler.
<i>Georgia,</i>	{	William Few, Abraham Baldwin.
<i>Attest :</i>		WILLIAM JACKSON, <i>Secretary.</i>

## AMENDMENTS TO THE CONSTITUTION

## ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

## ARTICLE II.

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

## ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

## ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## ARTICLE V.

No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

## ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

## ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

## ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## ARTICLE IX.

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

## ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

*[The foregoing ten amendments were adopted at the first session of Congress, and were declared to be in force, December 15, 1791.]*

## ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state.

*[Declared in force, January 8, 1798.]*

## ARTICLE XII.

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for

as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States directed to the president of the Senate; the president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three, on the list of those voted for as president, the House of Representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

[*Declared in force, September 25, 1804. This Article superseded Par. 1, Sec. i., Art. II.*]

## ARTICLE XIII.

Sec. 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Sec. 2. Congress shall have power to enforce this article by appropriate legislation.

*[Declared in force, December 18, 1865.]*

## ARTICLE XIV.

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Sec. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male members of such state being of twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Sec. 3. No person shall be a senator or representative in Congress, or elector of president and vice-president, or hold any office, civil or military, under the United States,

or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Sec. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Sec. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

*[Declared in force, July 28, 1868. This Article amended Par. 3, Sec. ii., Art. I.]*

#### ARTICLE XV.

Sec. 1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any state, on account of race, color, or previous condition of servitude.

Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.

*[Declared in force, March 30, 1870.]*

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